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Ontario. Legislative Assembly. Select Committee on
the New Ontario Hydro Building (36)

Hearings. v.7. July 11 - July 23, 1973

Mr. Phillips: I will call on

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LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Wednesday, July 11, 1973

Morning session

Mr. Phillips: Yes.

Mr. Phillips: Yes for some of these you have seen

Mr. Phillips: Yes. I should like to know that

Mr. Phillips: It was indeed a very good session

LEGISLATURE OF ONTARIO - SELECT COMMITTEE

HYDRO HEADQUARTERS

H 1168-1

July 11/73
10:15-10:20 a.m.
PLG

Mr. Chairman: With Mr. Walker's arrival we have a quorum, so ladies and gentlemen, I will call the meeting to order, and Mr. Shibley, again pass proceedings to you.

Mr. Shibley: I will call on Mr. Tatham as the next witness, Mr. Chairman?

GEORGE VERNON TATHAM, Sworn.

Mr. Shibley: Mr. Tatham, what is your present occupation?

Mr. Tatham: I am a vice-president, responsible for the commercial division of Y and R Properties Ltd.

Mr. Shibley: Yes. Would you move the mike around just so that it is catching your voice directly?

You are the Vice-President of Y and R Properties Ltd., which was one of the developers which tendered on the head office building for Ontario Hydro. Is that correct?

Mr. Tatham: Yes.

Mr. Shibley: I would just like you to provide the committee with some history of your experience in the building and building management field. I gather that your association with the Yolles family was established during the war years when you were in radar together. Is that correct?

Mr. Tatham: Yes.

Mr. Shibley: And for some 20 years you have been in the building and building management field since some time following the war. Is that correct?

Mr. Tatham: Yes. I joined Y and R Properties, that is the successor company to the Yolles and Rotenberg group of companies, 19 years ago as Buildings Manager and over the passage of this time my responsibility has grown. Currently I am very active in the industry. I am the current president of BOMA Canada, that is the Building Owners and Managers Association.

Mr. Shibley: We can hardly hear you, Mr. Tatham.

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Mr. Tatham: I was indicating that I am very active in an association which has a paramount place in our industry. It is called the Building Owners and Managers Association. I am the incoming President of the Canadian Association. This is an association of chapters across Canada. ~~As~~ ^{As} such I am also Chairman of the ~~International~~ ^{International} body of education where we are developing a professional management training programme to elevate the art of property management to the status of a profession. We are currently teaching this through Ryerson Institute.

Mr. Shibley: All right, Mr. Tatham. Now then, I want to take you back for the moment to the occasion of your attendances referable to the Hydro head office building. What was the first date upon which there was any communication between you and anyone on behalf of Hydro referable to their head office?

Mr. Tatham: Well, my personal first contact was on the evening of Monday, November 8, when I met Mr. Sissons who...

Mr. Shibley: That would be November 8, 1971.

Mr. Tatham: 1971.

Mr. Shibley: Yes, you met Mr. Sissons...

Mr. Tatham: I met Mr. Sissons, who was at that time a guest of Mr. Rotenberg on a tour of our Parkway Place development which had just opened where we have the Allstate head office building and the IBM computing centre.

Mr. Shibley: Yes. What was the purpose of that meeting?

Mr. Tatham: The purpose of that meeting was to acquaint Mr. Sissons with the quality of the building we were capable of creating for a given rental structure and to indicate the quality of the maintenance that we carry on in our buildings.

Mr. Shibley: These were only some of the buildings owned and managed by your firm. Is that correct?

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Mr. Tatham: That's right.

Mr. Shibley: Others being what buildings in the city of Toronto?

Mr. Tatham: Well our firm, the Yolles and Rotenberg group of companies, in the course of the '20s was THE developer in the city of Toronto. Our federal building when it was built in 1923 was the then largest office building in the city of Toronto. Over the years we have built, owned and managed a great ~~many~~ many buildings. ~~One~~ One of the major pre-war buildings -- post-war I should say -- ^{that} ~~was~~ built ~~it~~ was the British-American Oil Building, ^{the} ~~at~~ present Gulf head office building. This was on a 20-year lease with options to purchase and Gulf ultimately exercised its option to purchase. We have many buildings. Our biggest building is the Richmond-Adelaide Centre. Immediately thereabouts we have the federal building adjacent, 111 Richmond Street, the Sterling Tower, the national building, our newly-opened 390 Bay Street. We have the ~~a~~ Continental ~~Can~~ building, ^{at} ~~the~~ Parkway Place, we have the IBM computing centre, we have the Allstate building in Kitchener, we have

Tape H 1169 follows

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10.20 to 10.25 am
fvk

(Mr. Tatham)

~~the 22nd Continental Can building. At Parkway Place~~
~~we have the IBM Computing Centre. We have the All State building~~
~~in Kitchener. We have the Canada Trust Building.~~

Mr. Shibley: And these are buildings that were not only constructed but managed for any given period of time by your firm. Is that correct?

Mr. Tatham: Yes.

Mr. Shibley: And you made some mention that certain buildings were built for a specified tenant with an option to that tenant to purchase it and on variable arrangements. Is that correct?

Mr. Tatham: We have entered into, over the years, very many arrangements. We built the Telegram Building. We built Channel 9. These were negotiated contracts. The Imperial Life Building on St. Clair—each situation is different unto itself.

Mr. Shibley: When you were discussing the Hydro building with Hydro, did they ~~the~~ discuss with you any alternative other than a lease-purchase type arrangement?

Mr. Tatham: No.

Mr. Shibley: The only concept that they presented to you for consideration was a lease-purchase?

Mr. Tatham: Yes.

Mr. Shibley: Was there an awareness as part of the discussion that there were alternative methods of building this building without the need for Hydro to fund it?

Mr. Tatham: There was virtually no discussion in this area.

Mr. Shibley: Before leaving that, would you just as a matter ~~of~~ ^{and} listing them without going into a lot of detail, ~~what~~ are the alternative methods of a building being constructed for a particular tenant without funding by that tenant and with the right of the tenant to ultimately become owner of the building?

Mr. Tatham: There are many approaches that can be made to this particular problem. I think that, in development generally,

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(Mr. Tatham)

there are about four basic approaches. There is the approach where you design, build and own. This is something, for example, similar to what Commerce Court did where they assembled an in-house specialist team to work with consultants. We have been selected by the Royal Bank to be their experts to develop the Royal Bank concept.

Another approach is the joint-venture approach where the percentage participation varies related to the nature of the deal and the interest of the parties. An example of this, for example, would be the Toronto-Dominion Bank and the forthcoming Bank of Montreal. Another approach is the competitive bid approach. This is often used. This is an approach whereby a specification is laid down and a number of parties bid on it.

Then there is the negotiated contract. This is often done. We just finished the new Canadian head office for Coutts-Hallmark Cards. It was based on a negotiated contract basis. So that when it comes to the manner in which you can end up as a tenant in control of the property, there are many approaches. There is a straight-lease with an option to purchase at various periods of time throughout the term. This is an analysis that has to be done based on the interest of the parties. ~~Normally~~ ~~had a~~ Normally you wouldn't get an option to purchase in a period of time less than 10 years. We have gone as low as five. We've had five, 10, 15, 20, 25 years. There is a reversion in the case of the Hydro deal at the end of 35 years, I believe the term was.

Mr. Shibley: It was 30 years.

Mr. Tatham: Thirty years. So that in this area, ~~.....~~

(Tape H-1170 follows)

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M.R.

(Mr. Tatham)

~~... in this area~~ and, of course, there is the net lease; there is the net lease-back. And, again, this can have a reversion and a right of purchase.

Mr. Shibley: Yes.

Mr. Tatham: This is really just a technicality.

There are many approaches to how a deal ~~can be structured~~ ^{can be structured}.

Mr. Shibley: Now, returning to the first meeting with Mr. Sissons on November 7, was it?

Mr. Tatham: November 8.

Mr. Shibley: November 8, thank you.

Mr. Tatham: It really wasn't a meeting. ~~...~~

I just met Mr. Sissons while he was on a tour.

Mr. Shibley: I see. Was the tour arranged for some particular purpose?

Mr. Tatham: Well, yes. It happened to ~~...~~ coincide with the All State open house.

Mr. Shibley: I see. Were you alert to the circumstance as at November 8th that Hydro were considering the construction of the head office building on a lease-purchase basis?

Mr. Tatham: No. The answer to that is no.

Mr. Rotenberg, I believe, knew Mr. Sissons from an association in which Mr. Rotenberg is on the board of Mount Sinai Hospital and as such, I believe the Hydro and the hospital had some understanding relative to the operation of a parking garage. ~~and~~ I believe Mr. Rotenberg met Mr. Sissons at these board meetings and rumour had it that Hydro was in the marketplace for building and Mr. Rotenberg ~~was~~ took advantage of the fact he knew Mr. Sissons to explore this.

Mr. Shibley: Yes. So that it was on the initiative of Mr. Rotenberg that a communication of any kind was established with Hydro referable to its new head office building?

Mr. Tatham: Yes.

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Mr. Shibley: And that initiative took the form of an invitation to the opening on November 8th?

Mr. Tatham: Yes.

Mr. Shibley: Then, as a result of that initial contact, was there a meeting arranged?

Mr. Tatham: Yes. The first meeting we had was on November 11, 1971. This was a meeting with Hydro at Hydro offices. There were a number of people present from our firm, amongst whom were Mr. Rotenberg and myself as well as Mr. Sissons and Mr. Candy.

We received at that time a broad outline requirement of what the Hydro had in mind, ~~and~~ ^{one} of the comments in our memo to file relative to that meeting was the statement that the last thing we want is a monument but the last thing we want is a shoddy building, indicating a message of progress.

This was sort of the parameters to which we directed ourselves ~~on~~ ^{on} subsequent development.

Mr. Shibley: Just before you leave that, Mr. Tatham, I want the committee to have that understanding; that the broad parameters within which you were asked to work were a building which was not a monument but which was not a shoddy building?

Mr. Tatham: That's right.

Mr. Shibley: All right. Then, would you carry on?

Mr. Tatham: And indicated a message of progress.

Mr. Shibley: Indicating a message of progress.

Mr. Bullbrook: I wonder if by progress - I take it the witness means in a contemporary sense, *is it*?

Mr. Shibley: Would you like to explain your understanding of the words "message of progress"?


Mr. Tatham: I would make that assumption, yes. There was a further reference at that meeting to the effect that there was an important meeting to be held on November 22nd, ~~and~~ after which the Hydro would be in a better position to advise us whether or not we were to make a proposal.

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Mr. Shibley: Now, just stopping there again.

Members of the committee, I think you should put that into the context that on November 22nd there was a meeting of the general managers from which emanated a memorandum, wherein discussion was held as to singling out a particular developer to negotiate a contract; and the evidence was that that was on the basis that some salvage of the existing plans could be made; and the further evidence, I think, indicates that the developer in mind was Canada Square.

So that, I gather that as at November 11, Mr. Tatham, that the representatives of Hydro were making it known to you that there was a meeting coming up on the 22nd which would govern whether or not you should ~~should have been~~



H-1171 to follow

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V.H.

(Mr. Shibley)

~~coming up on the 22nd which would be a good idea~~
should even submit a proposal.

Mr. Tatham: Yes.

Mr. Deans: May I ask a question?

Mr. Shibley: Yes, surely.

Mr. Deans: Are the notes that Mr. Tatham is reading from notes of the meetings or notes he has made since?

Mr. Shibley: I think it is ^{fair,} ~~fair~~ I have asked Mr. Tatham to compile a chronology for his use and mine, and I think he is making reference in part to that, and so am I, in the ^{outline} ~~line~~ of his evidence. He will have, when it becomes appropriate, I will be putting ~~it~~ ⁱⁿ to exhibit the Yolles and Rotenberg file, or at least that much of it that I feel is a) relevant, and b) not already reproduced for the committee. We will get to that.

Mr. Deans: I just wanted to be clear on whether he was referring to original notes.

Mr. Shibley: I gather, however, Mr. Tatham, that the content of what was said to you at the meeting of November 11 emanates from what sources? Is it a matter of memory or is it a matter of?

Mr. Tatham: I'm sorry, Mr. Shibley and this gentleman here ...

Mr. Shibley: Mr. Deans.

Mr. Tatham: Mr. Deans, what I am referring to, when this matter first came to my attention I was called by Mr. Shibley and asked to come to his office where I spent a period of some two-and-half to three hours, and he said, I would like you to bring your file and if you don't do so, ^{he says} I can subpoena it. I said, well there is no need to do that. So I brought along my file, and it was left with Mr. Shibley which he has reproduced. Now in the course, this is my first experience here, so in the course of trying to find out what

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(Mr. Tatham)

this is all about, Mr. Shibley said, well would I make some notes, so really all I am referring to are some point form notes all of which is supported by three inches of documentation in the file.

Mr. Deans: I don't want you to think I was questioning your right to do it. I simply wanted to understand whether ~~and~~ you referring to original notes of the times of the meetings or whether you had in fact compiled a listing of them which you were referring to. That's was all.

Mr. Tatham: Just a summation.

Mr. Shibley: These witnesses are making me sound like I've been a pretty hard-nosed specimen to deal with!

Mr. Chairman: It is a little unusual for us to have someone with ^{such} a complete file Mr. Tatham. We are not used to it!

Mr. Tatham: I see. I see.

Mr. Shibley: I don't know about that, Mr. Chairman, I think Hydro has got a pretty complete file!

Mr. McCallum: Mr. Chairman, I wonder if I could just ask therefore that you give us back the stuff we have prepared for you this morning? We seem to be giving you things every day and if that's the ~~the~~ thanks we get, you can just give it all back please!

Mr. Shibley: That is why I felt I should come to your aid in that respect, Mr. McCallum. You have been very good about it.

Mr. McCallum: Thank you. I wonder when you are at my aid, as it were, if you wouldn't mind mentioning, when you were talking about the evidences been adduced on the November 22 meeting of general managers, that at that meeting, there was a full discussion of the possibility of doing business with this firm of Mr. Tatham, Y & R, and you will remember that Mr. Sissons gave that evidence. I thought it *perhaps* just as well to have that mentioned as well ~~as~~ at this moment.

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V.H.

Mr. Shibley: Well you've mentioned it.

Mr. McCallum: Thank you.

Mr. Shibley: I think the significant thing about this evidence is that, well, the witness has said that Yolles and Rotenberg were to


Mr. Tatham: Y & R.

Mr. Shibley: I am sorry. Y & R Properties were to wait upon the decisions of that meeting before they even undertook the preparation of a proposal, is that correct?

Mr. Tatham: Yes.

Mr. Shibley: All right then. Did you do anything ~~was~~ further pending November 22?

Mr. Tatham: Well, yes. ~~That~~ The -- I'm sorry. We didn't act in any depth until November 22, and our next meeting with Hydro was on December 14 when we met with Mr. Gathercole, Mr. Sissons and Mr. Candy, and this was a presentation in reference to Park Centre, which was the name which we gave to the development that we had conceived on the Eaton's College Street site. ~~This was a matter~~

H-1172 follows 

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10.35-10.40 a.m.
M.F.

H - 1172 - 1

(Mr. Tatham)

~~Development that would proceed on the Eaton College Street~~
This was a master plan for developing the entire block,
Just to be complete though, pending the 22nd of November, before
the 22nd, you

~~Mr. Shibley: Yes~~ did nothing further?

Mr. Tatham: No. We had done a lot of work on this concept
and it just happened to coincide, in our view, with the requirement
that Hydro had.

Mr. Shibley: When you say done a lot of work, you had
been doing a lot of work on the Park Centre concept?

Mr. Tatham: Yes, but this Park Centre concept, as one
of its anchors, had envisioned a million-square-foot ~~office~~
office building.

Mr. Shibley: I see, and you then viewed the prospect of
a Hydro head office building as being the anchor of the Park
Centre development?

Mr. Tatham: Yes.

Mr. Shibley: Then sometime after November 22nd, the
December 14 meeting was arranged. How did that come about?

Mr. Tatham: I can't honestly remember the sequence, and
I don't think there is anything in my file that would indicate
that. Mr. Rotenberg was in contact with Mr. Sissons and I was
in contact with Mr. Candy, so I surmise that it was through either
Mr. Sissons or Mr. Candy that the meeting was arranged with Mr.
Gathercole to explore ~~whether~~ whether there was interest in
developing further this concept on the Eaton site.

Mr. Shibley: Are you able to assist the committee at all
as to whether the December 14 meeting was initiated by Y and R or
by Hydro?

Mr. Tatham: Well, when you say initiated, we were
aggressively attempting to get a job and as a consequence I would
suggest that it would be by ~~virtue~~ virtue of our contacting our

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(Mr. Tatham)

contact persons, Mr. Sissons and Mr. Candy, that they in turn would advise us as to whether it was desirable or not desirable.

Mr. McCallum: Mr. Chairman, if I could just intervene for a moment, I don't think there is any dispute on the matter. The December 14th meeting was initiated by Mr. Sissons.

Mr. Shibley: All right. Then at that meeting, Mr. Tatham, you say you made a presentation of the Park Centre concept. I am ^{now} going to ~~now~~ produce to you those excerpts from your file that we have had reproduced for members of the committee and that I reviewed with you again this morning.

Members of the committee, as with Ellis-Don I believe, I would like the whole of this file simply to be made the next ^{a file} exhibit as ~~containing~~ the work-up material of Y and R properties.

Mr. Chairman: That will be exhibit 184.

Mr. Shibley: Now so as to clear it up immediately, Mr. Tatham, the material that has been reproduced includes a photo-copy of a photograph of a proposed building. I think you have the original in front of you, do you not?

Mr. Tatham: Yes.

Mr. Shibley: And that photograph was not then available, but was the building which you had conceived for Hydro, is that correct?

Mr. Tatham: Well when we -----

Mr. Shibley: Perhaps you could pass around the actual photograph so the members could see it.

Mr. Tatham: This rendering and this concept was never submitted to Hydro. At the time that we were making our presentation to Hydro we went to some lengths to indicate that what we were submitting was not architectural, it was just a concept that had developed - enough work had been put into it that we were able to develop a feasibility study. It required a great deal more work and subsequently the project evolved with

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(Mr. Tatham)

a building of this architectural style ^massing.

Mr. McCallum: Mr. Chairman, if I may just interrupt for one more moment, I wasn't certain when Mr. Shibley gave us these documents. ^I exhibit 184 documents which came into existence in the file of Mr. Tatham prior to the contract and leading up to and through his course of negotiations, ~~some~~

Tape H - 1173 follows

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M.R.

(Mr. McCallum)

~~Mr. McCallum: I am not sure that the documents that are referred to in the witness's statement are the documents that are referred to in the witness's statement.~~
~~Mr. McCallum: I am not sure that the documents that are referred to in the witness's statement are the documents that are referred to in the witness's statement.~~
or are some of these documents papers and notes that have come into existence since that time?

Mr. Shibley: No, these are all documents outlining the work done and the communications made as at the time of the efforts of Y and R to succeed in obtaining this project.

Mr. McCallum: I see.

Mr. Shibley: The only thing that was raised by the witness that is of a different nature are the notes that he is following in terms of a chronology of events, which Mr. Deans asked about, and which are not part of the exhibit.

Mr. McCallum: I see. And then, in addition to that, sir, ~~the~~ the witness had referred to some three inches of papers earlier.

Mr. Shibley: Yes.

Mr. McCallum: These then, are a selection made by you, as counsel for the committee.

Mr. Shibley: That is correct.

Mr. McCallum: Is that so?

Mr. Shibley: That is correct. The file proper is before the witness. I have a duplicate copy of the complete file but it contains much of what is already in exhibit. For example, it contains the two sets of proposals of Y and R Properties, which were in exhibit.

It contains newspaper accounts. It contains, I might say, doodlings and sketches that I didn't feel were particularly probative.

Mr. McCallum: Yes, sir.

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Mr. Shibley: So I have sorted through it and tried to telescope the material in that way.

Mr. McCallum: Thank you.

Mr. Shibley: If the witness himself thinks, as you go along, Mr. Tatham, if there is anything else in the original file that you consider should supplement the exhibited material, you will be sure to alert us to that and we ~~will~~ will have it ~~reproduced~~ reproduced.

I might tell the members of the committee that chronologically you will have to work from the back forward in this material.

Just going back to that exhibit file, Mr. ~~Mr.~~ Tatham, I notice that the first document is a document of minutes of a meeting on November 11, 1971, indicating the representatives of Hydro and Y and R, who were in attendance, and also indicating the requirements. Roughly they are - and you list the requirements in that memorandum - and then again, I think this may be what Mr. Deans was interested in, on page 2 it says "Hydro is having an important meeting Monday, November 22, after which they will be in a better position to advise us whether or ^{not} to ~~make~~ make a proposal. We might submit to them a breakdown of the \$2 difference in rental rate". I'm not sure what that means.

Mr. Tatham: Well, ~~a statement~~ in the course of this meeting, a statement was made by Mr. Rotenberg that we could conceive for Hydro a building that we could rent to Hydro that would be \$2 below the going market price.

Mr. Shibley: And did you explain to Hydro why you thought you could undercut the current market price by \$2 a foot?

Mr. Tatham: There was some discussion relative to this point, yes.

Mr. Shibley: And what was that?

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Mr. Tatham: You mean, how is it achieved?

Mr. Shibley: Yes.

Mr. Tatham: Well, you are asking for a little discourse here.

Mr. McCallum: Well, was this discourse given to the Hydro people? Is that what Mr. Shibley is asking or is this new this morning?

Mr. ~~Shibley~~^{Tatham}: In part, Mr. McCallum.

Mr. McCallum: Just in part, eh?

Mr. Shibley: Well, will you go on? Basically you told Hydro on the 11th of November that you ~~can~~

Mr. Tatham: That we could produce a high ~~quality~~ office building ~~year~~

Mr. Shibley: Yes.

Mr. Tatham: ~~can~~ of one million square feet ~~can~~

Mr. Shibley: Yes?

Mr. Tatham: ~~can~~ substantially below market conditions.

Mr. Shibley: And when you say substantially below, ~~you~~ was the \$2 figure mentioned?

Mr. Tatham: Well, now let me indicate ~~we~~ had just finished building Park Centre.

Mr. Shibley: Yes.

Mr. Tatham: Park Centre consists of ~~the~~ ² 200,000 head square foot/office for ~~the Park Centre~~



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(Mr. Tatham)

~~the All State Insurance Company, and 180,000 square foot IBM Computing Centre.~~

the All State Insurance Company, and 180,000 square foot IBM Computing Centre.

The standards called for in the IBM Computing Centre were: Very high levels of air conditioning, high levels of lighting, double glazing, high floor loading, under-filler duct systems; and we created that building; it's a high ~~was~~ quality building in every sense, for a very low price.

Having had that experience, we reached the judgement that we could put on the market what we referred to, in our proposal, a new-generation office building.

This building, which is conceived here, has over one million square foot of rented area. It has a quality as good as, if not better than, the vast bulk of office buildings in the city of Toronto. It is economic because of its design. It starts out with floor sizes of the order of 100,000 square feet and reduces, in size, as you go up the building.

The building configuration is a very, very important element of cost. There is simply no comparison; quality-wise, yes, cost-wise, no; between Commerce Court which is 56-storeys high and this building which is 16 storeys high because the large floor area, versus the small floor area, the height, all of this combines to make the efficiency of this building so far superior.

Mr. Shibley: This building being ~~by~~ the Hydro building!

Mr. Tatham: The building we had proposed to Hydro for their head office.

Mr. McCallum: Mr. Chairman, I'm just a bit confused.

Mr. Chairman: Mr. ~~Mc~~Callum, you are making a lot of interjections this morning. I don't want to be unfair. I'm wondering whether -

Mr. McCallum: I'll have to make them, Mr. Chairman. I feel that when the evidence is in it's important that I understand it. I can hardly give advice to Hydro if I don't. For instance,

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(Mr. McCallum)

now, we're talking about a building to be erected and I'm confused as to whether we're talking about a site out in Scarborough or a site at the Eaton's site. I don't know their professional names, or on this site that we're talking about here. I know that, so far this morning, Mr. Tatham has mentioned three separate sites, sir, and I'm just ~~am~~ confused as to which one we are now talking about.

Mr. Tatham: Let me straighten that out for you.

Mr. Chairman: I would just rather speak this way to Mr. McCallum first. I see your problem. I think some of the objections you are raising are, perhaps, not so important in the minds of the committee. I'm not saying they shouldn't be, but what I'm getting at, I think the committee is trying to get, from this witness, some of the ways ^{of} this operation. Although I know ~~that~~ he is one of the contenders, we're still interested in finding out the way these things work. I'm wondering if you would save your objections, Mr. McCallum, and perhaps ~~enumerate~~ them all and make a statement at the end, unless you really feel ~~that~~ that something is going off-track. You ~~may~~ feel we're going off-track all the way along. I haven't felt that we were.

Mr. McCallum: Not at all. Look, Mr. Chairman, I don't want to give that impression to any member of the committee or to you, nor am I, in any sense, criticising Mr. Tatham. I've known him for a very long time. I have the utmost confidence in him. It's just that I can't get instructions from my people when we, none of us, understand. I'm trying to make notes as to questions I might want to ask subsequently. And in ~~the~~ ^{such} issues, such as I've just now raised, I just was confused. You will notice that on November 11, in the Star, it ~~explained~~ speaks about Mr. Rotenberg ~~and~~ explained the concept behind Park Centre, and then, Mr. Shibley referred us to the second page and got Mr. Tatham talking about a \$2.00 difference in rental rates. At that moment I didn't know whether we were talking about Park Centre or the Eaton Centre, or the site upon which the Hydro building

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(Mr. McCallum)

is to be constructed. I needed it for my viewpoint.

Mr. Chairman: I can see, from your point of view, when you say you are comparing it with ~~what~~ the four bids, as it were, or the four contenders, it becomes important, but I think, at this point in the minds of the committee, we are looking at this as an ~~any~~ example of how this is done. That's why your ~~interject~~ interjections make us lose ~~any~~ the narrative story that we're getting.

Does it really matter where this building is situated for the dialogue that we are presently getting?

~~Mr. McCallum: I have noticed that the committee is already~~

~~noticed that~~

(Tape H-1175 follows)

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~~the dialogue is somewhat misleading.~~
Mr. McCallum: Yes sir. To answer you, it does to us. We've already noticed that in relation to their proposition on ^{the} Eaton Centre, they were expecting to put up a million square feet as an anchor, as it were, to get going on a bigger project. We have every reason to believe they might then be prepared on that site to give it even a greater reduction in price in order to get going with a bigger project.

Mr. Shibley: We are going to get to that.

Mr. McCallum: We just don't know these things.

Mr. Shibley: ~~We want~~ ^{would} get to that, Mr. McCallum, but I agree with the chairman, this is very disruptive of this witness's testimony.

Mr. McCallum: Well, I will try not and do that then if you will just bear with me. I too have some problems *and have been very accommodating.*

Mr. Shibley: I think if you will bear with us, we'll cover the topic and I am sure the witness intended to relate the matter of economics to the circumstance that you had in mind. But it really is disruptive in the course of a narrative of the witness as he gets rolling along in his testimony, to have these interruptions.

Mr. Chairman: I will give you ample opportunity, Mr. McCallum, and I understand why you are objecting as this is important evidence from your client's point of view. I don't think the committee is getting this in that light but I will give you an opportunity ~~to~~ *straighten these things out.*

Mr. McCallum: I am obliged to you. You must appreciate that I am in some difficulties. I don't have normal counsel privileges of cross-examination, ^{Even} if I make notes, I can't come back to it and ask Mr. Tatham for an explanation, ~~and~~ I just thought this was the more convenient way of doing it and I apologize for any inconvenience it causes members of committee. *I will try to restrain myself.*

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Mr. Chairman: We will give you an opportunity to straighten out any problems that you may think arise.

Mr. Tatham: If I may reply to Mr. McCallum, because it was certainly not ~~my~~ intent to confuse.

The approach relative to a building of this configuration can be done in the core area of the city of Toronto where there is a site adequately large to permit it. Therefore, this could be done either on the Eaton site and/or on the Hydro's own site. My only reference to our Parkway Place development of the IBM and ~~Allstate~~^S buildings was to indicate that this style of building, this large floor area building, permits economies of scale and these are cumulative and it is very important that this be understood. A large floor area building has less perimeter per square foot ~~less~~^{of} usable rented area, which is where the dollars are. Because of this, your airconditioning costs are substantially lower. Because these buildings have large floor areas and because they are low, the elevating requirement and/or escalator requirement is low because you don't have to travel as high. Therefore, the efficiency^{and} efficiency must be understood in this business, the efficiency is much higher. Therefore, you can design buildings that have efficiency factors of the order of 93 or more per cent as compared to efficiency factors of 85, 80 or down in the seventies, subject to other styles of buildings. Now this has a very major effect on the rental dollar. ~~Therefore~~ Therefore, the configuration of the building is an important element in the rental dollar and it^{is} an important element in being able to supply the quality of building for a given cost. That's how it relates to this saving that we made reference to.

Mr. Shibley: Now, Mr. Tatham, I just want to be clear on this with the committee. Is it your evidence in summary, therefore, that because Hydro was building a relatively low-rise building - ~~and~~^{when} I say relative, relative to such buildings as the Bank of Commerce - and because the floor

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areas were massive ...

Mr. Tatham: Yes.

Mr. Shibley: ... because of the consequences in terms of elevating and so on that you've mentioned, the efficiencies effected in terms of cost of construction, there were efficiencies in cost of construction and there were efficiencies in the net usable space available to be rented?

Mr. Tatham: Yes.

Mr. Bullbrook: And concurrently management?

Mr. Tatham: Yes. It also follows that the larger the building, the easier it is to manage and the less cost it is to manage. If I may, all of our entire industry works on the basis of the square foot and the square foot that is important is the rented square foot. ~~And if you take an instance of a building~~

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M.F.

H - 1176 - 1'

(M r. Tatham)

~~And that is important in the context of the fact, and if you~~
take an instance of a building as small as 60,000 square feet,
let us say, and you have a building superintendent, and his
wages are spread over each square foot, then the cost of his
salary alone is a significant element. If you spread perhaps a
higher calibre individual over a bigger building, but his salary
per square foot is significantly less.

Mr. Chairman: Mr. Bullbrook?

Mr. Bullbrook: No, I just wanted to make that clear. It
came to my mind as a matter of logic, and I understand then from
the evidence, and counsel will help me, that if a building has a
high efficiency fa~~ct~~or then the cost of management necessarily
would be less.

Mr. Shibley: Mr. Bullbrook, I might tell you also that
this witness will be giving very precise evidence as to the cost
of maintaining this building as at 1974 on which they based their
submission. I think I have already established the experience of
this firm in this area.

Mr. R. G. Hodgson: I wonder, Mr. Shibley, as he has stated
several factors, what about the aspect of quality? Does the
higher quality cut the maintenance, too?

Mr. Tatham: Quality as to building or quality as to
maintenance?

Mr. R. G. Hodgson: Quality as to building, does it cut
the maintenance cost?

Mr. Tatham: Well, if I may speak to that, quality as
to building is usually established by a specification or standards,
~~and~~ you can refer to floor loading, you can refer to lighting
levels, and not only the lighting level but the quality of light
that emits from the source, the air conditioning specification,
double versus single glazing, calm spacing, the curtain wall,
the finishes ~~whether you~~ use granite, concrete, marble. All of

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(Mr. Tatham)

these things develop ^{the} so-called quality of the building.

Mr. R.G. Hodgson: Does that affect the maintenance substantially?

Mr. Tatham: There is an effect on maintenance, yes, to a very great degree. In other words, the whole art is to select those materials which require less maintenance. You can cause ^{work, you can} make it a make-work project.

Mr. R.G. Hodgson: Thank you. I just thought that in relating to your other comments that this was a very important element.

Mr. Deans: I want to understand. Are you telling me that maintenance will necessarily be lower on a higher quality building?

Mr. Tatham: No.

Mr. Deans: You are not saying that, I didn't think you were, but I want to be sure.

Mr. Tatham: No, I say that the selection of the materials in ^a the building can affect its cost of maintenance.

Mr. Deans: And the selection of materials is not necessarily a qualitative matter?

Mr. Tatham: No, that is another aspect.

Mr. Deans: That is another aspect altogether? That is fine.

Mr. ~~Deans~~ S.R. Hley: You might put marble in at high cost and it may be very costly to maintain.

Mr. Deans: To maintain, that is what I was trying to get at. Thank you.

Mr. Tatham: Or stainless steel, or bronze, or brass.

Mr. Shibley: Right.

Mr. Deans: That would make it a higher quality building, but it wouldn't necessarily cost more?

Mr. Tatham: Well in some people's eyes.

Mr. Deans: Thank you.

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Mr. Shibley: Mr. Tatham, you made reference to a number of elements that enter into the quality of the building including the floor-loading, lighting, etc. In terms of what you were developing as a proposal for the Hydro building, what can you tell us as to including those quality items in the building which you were proposing?

Mr. Tatham: The information that we were supplied with relative to the first meeting indicated, for example, that the lighting level would be 150 foot-candles.

Mr. Shibley: Yes. This is ~~-----~~

Mr. Tatham: At desk level. That would be a maintained lighting level. That is an exceptionally high lighting level.

~~Mr. Shibley: Notwithstanding it is high, what can you~~

~~your and Mr. Tatham's statements that you are not going to~~
~~specify a lighting level?~~

Tape H - 1177 follows

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Mr. Shibley: Notwithstanding it is high, when you made your submissions ultimately, it was on the basis of these specifications?

Mr. Tatham: Oh yes. That would be about a six-watt-per-foot load because that high lighting level reflects in an air-conditioning load as well.

Mr. Shibley: Now would an adjustment downward of that lighting level by saying that should be the lighting level at ceiling, rather than at desk, would that have affected the cost?

Mr. Tatham: ~~That would be about a six-watt-per-foot load~~ You don't measure the lighting level at the ceiling. You normally measure it at desk level and an accepted standard for high quality office buildings in the city of ~~the~~ Toronto today is 100 foot-candles maintained. That means that you have an electrical load associated with lighting of something just under four watts a square foot. This means that your air-conditioning costs would be substantially reduced, if you take six watts per square foot as compared to four watts per square foot, as you can see you have either got a 50 per cent increase or a 30 per cent decrease.

Mr. Shibley: And just again to alert the committee, the lighting not only affects the cost of installing the ~~lights~~ lighting per se and maintaining it, but also affects the cost of the air-conditioning required to cool the heat generated by that lighting.

Mr. Tatham: It affects both the initial capital cost and the on-going operating cost.

Mr. Shibley: So any downward adjustment of this specification would be a material factor referable to cost.

Mr. Tatham: Yes.

Mr. Shibley: Yes. All right.

Mr. R. G. Hodgson: Isn't it also governed Mr. Tatham, by the open-office concept? Doesn't that have a ~~factor~~ factor in it?

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Mr. Tatham: The open-office concept and lighting levels are not necessarily interrelated. In other words, lighting is very much affected by partitions and/or the open-office concept. If you use dark paint, dark colours, the light is absorbed, but 100 foot-candles maintained is a very accepted norm for high-quality office buildings.

Mr. Shibley: Mr. Tatham, while we are on this subject, and members of the committee, Exhibit 2, which is the contract and part of which is Schedule C with ~~outlined~~ specifications, it is about a third of the way through the volume. Schedule C at page 4, item 21, I ask you to note, Mr. Tatham, the specification which forms part of the contract between Hydro and Canada Square is:
"Lighting system to be 416-volt, two-by-four fluorescent fixtures installed to maintain 100 foot-candles at desk level."
Is that a material variation from the specification upon which your firm was asked to submit a proposal?

Mr. Tatham: Oh yes. Yes. Very significant.

Mr. Shibley: Very significant. And beyond what you have told us as to the significance of that downward adjustment of the specification, have you anything further to tell this committee?

Mr. Tatham: No.

Mr. Shibley: The significance of it is the capital cost of installation, not only of Hydro in air conditioning, but the maintenance of that facility as well.

Mr. Tatham: On-going operating costs, but by virtue of the way the lease was structured, the Hydro that would be consumed by the fixture itself would be paid for by Hydro. The cost of air conditioning, however, would be a cost that had to come out of the operating cost allowance.

Mr. Shibley: All right. Now then, you also mentioned other elements that enter into a quality building and one of them was under-the-floor ducting?

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Mr. Tatham: An under^ffloor duct system, yes.

Mr. Shibley: I should tell you that this building to be constructed by Canada Square has an over-~~the~~the-ceiling...

Mr. Tatham: Yes. This was not called for in the initial, ^{Because}~~because~~ of the office landscaping concept, ^{an}~~an~~ under^ffloor duct system was not a requirement.

Mr. Shibley: All right. Then the double-curtain wall...

~~Mr. Bullboard: I am sorry, was there a material change?~~

~~Mr. Shibley: No, No.~~

~~Mr. Bullboard: That is all right. Fine.~~

Tape H 1178 follows

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(Mr. Shibley)

~~When the double glazed wall was first~~
Mr. Bullbrook: Excuse me, was there material

changed?

Mr. Shibley: No.

Mr. Bullbrook: There wasn't. Right.

Mr. Shibley: All right. But the point of the matter is that it wasn't necessary for the building because of the landscaping. It was never part of the specification and adds nothing, I gather, to anyone's building in this respect.

Mr. Tatham: We didn't quote on an underfloor duct system.

Mr. Shibley: Right. Now, then, you also mentioned the double glazed

Mr. Tatham: Double glazing - that was a requirement I believe. I don't think we were aware of that in the initial requirement but subsequently,

Mr. Shibley: Yes. By the time you made your ultimate submission it was based on double glazing?

Mr. Tatham: ^{It} Was based on double glazing.

Mr. Shibley: Was there any discussion about a curtain wall?

Mr. Tatham: No.

Mr. Shibley: And is it not

Mr. Tatham: We never got to this level of detail as the rendering wasn't developed.

Mr. Shibley: Yes.

Mr. Tatham: We put out quite a thorough specification and I can check on that to make sure that we did quote on double glazing.

Mr. Shibley: I see. All right.

Mr. R.G. Hodgson: What about the other very important feature, the reflective glass?

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Mr. Shibley: Well, Mr. Tatham, the building ~~As~~ now conceived, I take it, will have a curtain wall of reflective glass. That would add to its cost, would it not?

Mr. Tatham: Yes. I would think that a curtain wall of that type would cost something of the order of about \$12, plus or minus, a square foot as opposed to a curtain wall of the type that we were envisioning that would cost of the order of \$6.50, \$7, plus or minus, a square foot.

Mr. Shibley: Yes, so that in respect of this - when you say per square foot, are you talking about ~~per~~

Mr. Tatham: A square foot of exterior glass area.

Mr. Shibley: Yes.

Mr. Tatham: Curtain wall area is the way that ~~per~~

Mr. Shibley: So that if it ^{is} suggested that that

adds a cost of ~~2~~ in excess of one million dollars to the cost of this building that would not be an extravagant figure?

Mr. Tatham: Well, without doing a take-off, I wouldn't ~~per~~

Mr. Shibley: All right.

Mr. Tatham: ~~per~~ really be able to answer that. It's a large surface and one million dollars might be the premium that is paid for that type of a curtain wall.

Mr. Shibley: All right. Now, then, ~~now~~ returning to the element of a substantially lower cost to Hydro than current market that was under discussion, I ~~take~~ take it, at a meeting with Hydro on November 11. Is that correct?

Mr. Tatham: ~~According to the~~ I'm sorry,

Mr. Shibley, I was trying to do two things at once. I find that our spec says "curtain wall, double glaze, rain-screen designed with architecturally pleasing pre-cast concrete." It's what we ~~quoted~~ quoted on.

Mr. Shibley: So you did quote on a curtain wall?

Mr. Tatham: We did quote on a double glazing ~~per~~

Mr. Shibley: Right.

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Mr. Tatham: Rain-screen designed, which means it can be ~~humidified~~ humidified. That's a very sophisticated exterior wall, with pre-cast concrete spandrel.

Mr. Shibley: Now, Mr. Tatham - yes.

Mr. Gaunt: Excuse me, Mr. Shibley, I'm wondering if that specification would run at \$6.50 to \$7. Is that my understanding?

Mr. Tatham: Yes.

Mr. Gaunt: Yes. Okay.

Mr. Shibley: Now, returning to the meeting of November 11: Was that the meeting at which you were indicating to Hydro that you could provide a high ~~the~~ quality building at lower than ^{the} prevailing market?

Mr. Tatham: Yes.

Mr. Shibley: And you had already referred to your experience with the IBM centre and the Allstate building that you had recently constructed. Was it also part of that saving - I'm sorry - I take it that the savings that you had in mind ~~was~~ would be effected for the reasons you have already outlined to the committee?

Mr. Tatham: Yes.

Mr. Shibley: Were you prepared to pass those savings on to Hydro?

Mr. Tatham: Oh, yes.

Mr. Shibley: And why were you prepared to pass them on?

Mr. Tatham: To get a deal.

Mr. Shibley: All right. Was part of your thinking at that time affected by the circumstance that you wanted the building to be the anchor building in the Eaton's - in the Park Centre development?

Mr. Tatham: Yes.

Mr. Shibley: So that that would be additional motivation to you to pass along these savings to Hydro? *Is that correct?*

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~~and that would be additional motivation to you to pass along these savings to Hydro? Is that correct?~~

Mr. Tatham: Well, the development business is like any other business and unless you do business, you are not in business. We thought we had come forward with a very imaginative solution at an eminently low price, which had all the high quality features associated with good office space and that it would take a user of the magnitude of Hydro to fully capitalize on it.

Mr. Shibley: Yes.

Mr. Tatham: We had the further incentive, when you are developing a 12-acre site, of having a catalyst, a starter; a million square foot building is a major building in the city of Toronto, ^{but} when you are developing a 12-acre site, it is just one component of that 12-acre site, therefore, we made it that much more attractive in order to try and induce Hydro to consider it.

Mr. Shibley: Yes. Just so that we can put matters in immediate perspective, and we will come back to this later as an ultimate conclusion on your part, but ^{because} ~~because~~ we are on topic, I would like you immediately to compare the two proposals that you were making. One for the building to be constructed on the Eaton site and the second for the same building to be constructed on the Hydro site. As I understand it, Mr. Tatham, your proposal for a building on the Eaton site was at a rental rate of \$4.70 per square foot, is that correct?

Mr. Tatham: Mm-mm. (affirmative)

Mr. Shibley: And that price was to include the land, in the sense that Hydro would become owner of the land at the Eaton site, after 30 years; is that correct?

Mr. Tatham: The answer to that is yes, but they wouldn't become owner of the entire site, just the land associated with that phase 1 building.

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Mr. Shibley: I appreciate that. But that the land on which ...

Mr. Tatham: The building stood.

Mr. Shibley: ... the building stood, and located at the intersection or in the area bounded by Yonge Street ...

Mr. Tatham: It was on Bay Street.

Mr. Shibley: ... College - I see, on Bay? This was to be on Bay Street?

Mr. Tatham: It was on Bay Street, Bay and - I forget the name of it ...

Mr. Shibley: College?

Mr. Tatham: No. No. It was at the - there's a little street that bisects the site ...

Mr. Shibley: I see.

Mr. Tatham: ... and it was at the extreme ...

Mr. Shibley: All right.

Mr. Tatham: ... south-west corner, of Bay and..

Mr. Shibley: So that, again to make it clear, you were going to construct ...

Mr. Tatham: Shuter?

Mr. Shibley: No.

Mr. Bullbrook: No. It is not Shuter.

Mr. Shibley: I know the street. It is a wide street off which parking ...

Mr. Bullbrook: The parking entrance.

Mr. Shibley: Okay. We have all been there with our wives!

Mr. R.G. Hodgson: It's on the east side of Bay Street.

Mr. Tatham: On the east site of Bay Street, yes.

Mr. Shibley: Now then, I just want to make it clear that the proposal for Park Centre, Mr. Tatham, was a proposal for the construction of a building on Bay Street, south of College ...

Mr. Tatham: Yes.

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Mr. Shibley: ... at a rental rate of \$4.70 per square foot, which at the end of the term of 30 years would mean that Hydro owned not only the building but the land on which it was situate?

Mr. Tatham: Yes.

Mr. Shibley: And you added to that an operating cost factor of \$1.35 per square foot ...

Mr. Tatham: No. No. ~~We do not~~. It included.

Mr. Shibley: It included? I am sorry, yes, it included \$1.35 and that was based upon a 1974 base year?

Mr. Tatham: Yes.

Mr. Shibley: So you were projecting ahead to a maintenance cost of \$1.35?

Mr. Tatham: Yes.

Mr. Shibley: The net rental therefore would be ~~XXX~~ \$3.35 per square foot?

Mr. Tatham: Yes.

Mr. Bullbrook: Mr. Shibley will you help me on one thing which I still continue to be confused about. When we are talking about a base maintenance cost at 1974, does that mean that if the building was not completed until 1975, there would be renegotiation under the Y & R proposal?

Mr. Tatham: No. Under the Y & R proposal, ~~there is~~ ~~an allowance for operating costs and that~~.

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PLG

(Mr. Tatham)

~~and that was the way we put in an allowance for operating costs and that judgment was that a high quality of maintenance could be achieved for a sum of money, being \$1.35 per square foot, but in the event that the costs were ~~less~~ greater than that, the tenant would pay the premium. In the event that the costs were less than that, the tenant would get back. It was an allowance.~~

Mr. Shibley: It was only an allowance.

Mr. Tatham: An allowance.

Mr. Shibley: Were you prepared to commit for a rental rate, which included operating costs of \$1.35 per square foot, as a base for the year 1974?

Mr. Tatham: Yes. The way our deal was structured, however, was that it was put in as an allowance based on our experience.

Mr. Shibley: But it was not just an allowance in the sense of an adjustable allowance. It was a commitment, was it not?

Mr. Tatham: It wasn't a commitment but I believe it was structured as an allowance.

Mr. Shibley: Yes. I think what Mr. Bullbrook is...

Mr. Allan: It was not a commitment then?

Mr. Shibley: Well, that is what we have got to clear up, Mr. Tatham.

Mr. Tatham: The way ~~escalation~~ ^{escalation}, full operating costs, in accordance with our current practice, our rental rate, incorporates an allowance of \$1.35 per square foot ~~for~~ ^{for} operating. It ~~was~~ ^{would be} an allowance.

Mr. Shibley: I think what the committee is anxious to ascertain, Mr. Tatham, if, as at 1974 the cost of maintenance was higher than \$1.35 per square foot, was that at your risk or at Hydro's risk?

Mr. Tatham: That would be at Hydro's risk.

Mr. Shibley: It would be at Hydro's risk. So you were going on the basis of an allowance only?

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Mr. Tatham: Of an allowance.

Mr. Deans: Mr. Shibley, would you permit me to ask whether this was a negotiable item or whether it was a fixed item?

Mr. Tatham: Oh, certainly, ^{but} we never got into any negotiation.

Mr. Deans: That is also important.

Mr. Bullbrook: My concern, if I might express to the counsel through the Chairman, ^{it} goes without saying that what we will want to do eventually is be able to compare these salient features, ~~and~~ that is why I really won't interject again because I am sure that you ^{want}

Mr. Shibley: ^{I want you to.} Let me explain, Mr. Bullbrook. I think we are all into an area of this witness's expertise wherein, unless I stand corrected, I don't believe any committee member has expertise to the ~~same~~ extent that any member feels that he needs an enlargement upon the educational process that this witness ~~a~~ can provide, ~~and~~ it is the reason I kept him in my office for two and a half hours and I have had similarly extended discussion with him, ~~and~~ almost to the point of feeling he is entitled to an expert's fee. I think that you should ask questions of him and make sure that you ~~are~~ have a general understanding. The only caveat I have in that respect is that we should be careful ~~that~~ in the course of obtaining a general understanding of these matters, to segregate that evidence from evidence which is directed to the elements of the ~~same~~ competitive nature of this proposal to that of the other developers, and particularly that of Canada Square, but I do feel that this witness in particular can help this committee more so than ~~as~~ well, I don't know about Mr. Moog, but certainly to the extent that I have had conversation with him, I think he can be an extremely informative witness.

Mr. Chairman: Well I would ~~just~~ like to endorse what Mr. Shibley has just said about just keeping our minds open

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PLG

(Mr. Chairman)

on that one point, because I am sure we will hear from Mr. McCallum on it. In other words, if we regard Mr. Tatham as an educational expert for us and an expert, we must also remember that he was also one of the contenders.

Mr. Shibley: Right. If we may then go on, still dealing with the ~~University~~ ^{Park Centre} proposal, Mr. Tatham, was it part of that proposal that ~~you~~ you were prepared to purchase the existing Hydro site at University and College?

Mr. Tatham: Yes.

Mr. Shibley: And were you prepared to purchase that at ~~any~~ whatever its current market value amounted to?

Mr. Tatham: Yes.

Mr. Shibley: You knew that there had been some discussion that it was worth seven million dollars?

Mr. Tatham: Yes.

Mr. Shibley: And were you prepared to pay more than that amount should it have been appraised at higher?

Mr. Tatham: Yes.

Mr. Shibley: Allowing for the amount of ~~seven million and one more for that site~~

Tape H 1181 follows

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fvk

(Mr. Shibley)

~~all the money~~ of \$7 million and now more for that site, if Hydro recovered \$7 million for the existing site, what would be the net ~~rent~~ rental that you were proposing for the Hydro building at the Park Centre site?

Mr. Tatham: That would be subject, of course, to what value Hydro put on the cost of money. ~~It~~ It was \$7 million and you put money to work at 10 per cent, it's \$700,000 a year. If it went to work at 8 per cent, of course, it \$560,000, therefore we, in our proposal, arbitrarily put 10 per cent value and said it's worth 70 cents a foot and therefore the ~~rent~~ true effective rent ~~and~~ develops to \$2.65 net plus operating ~~and~~ costs.

Mr. Shibley: Yes. So that again to be clear, members of the committee, if you take these figures ~~based~~ on the Eaton's site, the rate would have been \$4.70 including the land. The operating cost allowance was \$1.35. That's to be subtracted from \$4.70 for a net ~~rent~~ rental of \$3.35 and, if you further deduct the sum of 70 cents per square foot by reason of Hydro realizing \$7 million for its current site, the effective net rental would have been \$2.65 ~~and~~ per square foot. Is that correct?

Mr. ~~Tatham~~ Tatham: Yes. That's making an assumption that Hydro is going to put a value of 10 per cent on the money, which was perhaps high for Hydro, and high for us, but high for Hydro.

Mr. Bullbrook: I'm sorry I'm missing that. I took it ~~that~~ quite the contrary, ~~that~~ the 10 per cent was high, but that benefited this ~~Hydro~~ Hydro, I thought.

Mr. Tatham: It does.

Mr. Shibley: What the witness is saying, Mr. Bullbrook, is this; Hydro may view the value of the \$7 million to be less than 10 per cent on its money but rather 9 per cent, or 8 per cent, in which event the deduction would not be 70 cents a square foot.

Mr. Bullbrook: I realize that, but isn't that unreasonable to think ~~that~~ that Hydro would do that when they are getting the benefit at 10 per cent?

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Mr. Deans: No, they are not. They are getting the money to invest at whatever rate they can get for it.

~~Mr. Deans: No, they are not.~~

Mr. Bullbrook: Well then I am obviously missing this point. I'm sorry I missed it.

Mr. Shibley: I'll take it through if I may, Mr. Bullbrook. If Hydro had adopted the Park Centre proposal, it ~~is~~ could have sold its site to Y and R Properties for \$7 million or more and put that \$7 million to use. At 10 per ~~cent~~ cent that would have generated \$700,000 a year but at ~~8~~ 8 per cent it would have only generated \$560,000 a year. So what the witness is saying is, depending on the value ~~is~~ that Hydro put on the use of money, whether it be 10 per cent or 8 per cent, the adjusting figure of 70 cents might be a ~~variable~~ variable in the same way, for example, let's say Hydro got \$10 million for the site.

Mr. Bullbrook: Help me then, I'm obviously missing something. As I understood the evidence, Y and R took the position that the effective usable rate for the \$7 million was 10 per cent. Had it been 8 per cent, for example, the rent would ~~have~~ have worked out ~~to~~ to \$2,85 per square foot.

Mr. Shibley: Something like that.

Mr. Bullbrook: Well, am I not correct in assuming that Hydro got the benefit of what I deem to be a very attractive rate for use of the money?

Mr. Allan: No, there was no rate set.

Mr. Bullbrook: All right.

Mr. Deans: ^{Can I help} ~~clear~~ ^{it} up, because I think I understand. The money was, in fact, going to be paid to Hydro who could do whatever they wished with it and whatever interest rate they got for it would be the amount. There was no guarantee of 10.

Mr. Shibley: It ~~was~~ ^{would be} part of their capital funds generally. It had nothing to do with the project as such but then they would be free to sell that site, remembering that part of the Park Centre proposal included the land on which ~~the~~ the building

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fvk

(Mr. Shibley)

was to be situated. They now had a parcel of land they could sell for \$7 million or more and do with the money as they wished. They could build a generating station, or whatever.

Mr. Deans: Can I ask a question about this because I want to be clear? I understand Mr. Bullbrook ^{what} saying, ^{is} Is it not ~~anything~~ so that it had nothing at all to do with the actual rental value what Hydro did with the \$7 million? That was calculated in by Y and R ~~by~~

Mr. Shibley: That's right.

Mr. Deans: ~~by~~ but, in fact, what Hydro did with the money they got for the Hydro property was their business and, in fact, Y and R would have better off not to ^{have tried} ~~try~~ to calculate that?

Mr. Shibley: No, no, Y and R -

Mr. Allan: No, no, but it had an effect on the net rental.

Mr. Deans: No more effect than if they invested \$10 million in anything else.

(Tape H-1182 follows)

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~~Mr. Deans: No more of that than is the, interest the~~

~~will be in southern area.~~
Mr. Allan: Oh, of course it has.

Mr. Deans: It is revenue to Hydro.

Mr. Allan: ~~revenue~~ They had that much income

which would have applied on the rental.

Mr. Bullbrook: You are giving them the benefit of the income.

Mr. Deans: Yes, but they would have got that income had they sold the property to the Dominion Bank, or to anybody else.

Mr. Allan: I know, but to consider the whole package you must take this into account.

Mr. Chairman: I can't rule Mr. Allan out of order.

Mr. Bullbrook: I don't think any of us are greatly out of order, because it is quite obvious that my initiation of concern really, ~~and~~ and I'm still not clear on it.

Mr. Shibley: Yes, and I am glad you have, ~~it~~ Well,

Mr. Bullbrook, let's understand what Y and R were trying to do. They were looking at it here not from their point of view but from Hydro's point of view, and that is what Mr. Allan is ~~saying~~ saying, ~~in fact~~ ^{effect} in ~~fact~~ when Hydro were evaluating the Y and R proposal to build them a building on another site and sell them the building and the land, at this rental rate, that Hydro should take into account the fact that it would realize \$7,000,000 on its existing site and the effect of that should be taken into account in computing the net rental cost to Hydro, from Hydro's point of view.

~~Bullbrook~~

Mr. ~~Deans~~ ^{Bullbrook}: Right, and may I say then, taking this thing full circle, and I hope I am not opening it up again, that in making that evaluation, Hydro had to realize that the effective rate that Y and R was proposing was 10 percent.

Mr. Shibley: No, no, no.

Mr. Allan: That was only ~~an imaginary~~ ^{an imaginary} rate.

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Mr. Shibley: Hydro had to take into account what it was paying for money it was borrowing.

Mr. Bullbrook: All right.

Mr. Shibley: That's probably the best way of putting it.

Mr. Bullbrook: I am sorry.

Mr. Shibley: Instead of borrowing another \$7 million at whatever its bond rate was, it had that \$7 million from the sale of the land.

Mr. Chairman: That is why Mr. Tatham said 10 per cent was probably high. Mr. Henderson.

Mr. Henderson: Mr. Chairman, I believe I understand what the witness is presenting to us, but I am wondering, through our solicitor, is he going to prove to the committee at a later time the amount of interest that Hydro usually pays? I presume they have some money ...

Mr. Shibley: Yes. We are going to call all of the ...

Mr. Henderson: ~~That~~ ^{That will be} brought out later?

Mr. Shibley: We are going to bring financial people from Hydro in.

Mr. Henderson: This at the moment is for comparative figures ~~with~~ ^{with} the different companies?

Mr. Shibley: That's right. Exactly.

Mr. Henderson: Very good. Thank you.

Mr. Bullbrook: I am going to stop questioning further. I am going to ask counsel to take ma aside.

Mr. Shibley: Okay. It won't be the first time!

All right, Mr. Tatham. You see, members of the committee, I think the important thing here though is to understand that an element that enters into a comparison of the Park Centre proposal and building on the existing site is the element that Hydro then would be ~~free~~ free to dispose of its existing site for \$7 million or more, and you've got the net rental figure of \$2.65 based upon a return ^{on} ~~of~~ money of 10 per cent.

Mr. Tatham: Yes.

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Mr. Shibley: If the return on money or the cost of money to Hydro was eight per cent, the adjusting figure would be less than 70¢ and the net rental might be, let's say, \$2.80 a square foot.

Mr. Tatham: Yes.

Mr. Shibley: All right. Now then, comparing that with your proposal on the Hydro site, this is for the selfsame building, on the Hydro site, I take it that the rental rate which was proposed for the same building on the Hydro site was \$4.50 per square foot - is that correct?

Mr. Tatham: Yes.

Mr. Shibley: And that again included \$1.35 for the operating costs?

Mr. Tatham: Yes.

Mr. Shibley: For a net rental of \$3.15 per square foot?

Mr. Tatham: Yes.

Mr. Shibley: Is that correct?

Mr. Tatham: Yes.

Mr. Shibley: So that without allowance for the value of the site, the comparative rentals would be a net rental of \$3.35 to a net rental of \$3.15, but with allowance for the realization on the existing site, at 10 per cent, the comparative net rental would be \$2.65 to \$3.15?

Mr. Tatham: Yes.

Mr. Shibley: Now then, also those figures indicate, do they not, Mr. Tatham, that 20¢ per square foot was all that was added to the rental rate for the inclusion of the site at Bay Street?

Mr. Tatham: Yes.

Mr. Shibley: And that even if you were building the building on Hydro's own site,

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(Mr. Shibley)

~~and that even if you were building the building, a Hydro's own~~
~~site,~~ your net rental rate that you were proposing for building on their site, and without the motivation of using the building as an anchor for the Park Centre ~~the~~ development, was still going to be \$3.15 net rental?

Mr. Tatham: Yes.

Mr. Shibley: All right. And those figures, Mr. Tatham, were computed on a cost of money of what rate?

Mr. Tatham: Eight and three-eighths per cent, Canadian funds.

Mr. Shibley: Yes. Did you fairly expect that money could be raised in the money markets at that rate for this building?

Mr. Tatham: Well, yes. That was our judgement of the money market at the time based on our access to the money market. We have -- we are quite sophisticated in this area -- and that was the money market's judgement of what would be prevailing had it been done at that time with a Hydro covenant.

Mr. R.G. Hodgson: With the Hydro covenant?

Mr. Tatham: ~~W~~ The Hydro covenant.

Mr. Chairman: Mr. Allan.

Mr. Allan: Could I just ask a question. If that was a firm figure?

Mr. Tatham: Yes.

Mr. Allan: It was definitely a firm figure?

Mr. Tatham: Yes. At that time.

Mr. Allan: But if your proposal had been accepted?

Mr. Tatham: Yes.

Mr. Allan: It would have been then ...

Mr. Tatham: We were asked to put in the cost of money, and all our calculation was predicated on that unit of money, available at that point in time. Now if ~~the~~ *the motivation* ...

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Mr. Allan: Would you be able to protect yourselves at that time, on that 8-3/8 per cent?

Mr. Tatham: Yes. But the money markets, as you know, change very rapidly, but that was what we were quoted and the money could have been found to supply this need at that amount.

Mr. Allan: I don't believe, Mr. Chairman, that I am still clear....

Mr. Chairman: No, I don't think you are.

Mr. Allan: ... on the matter as to whether or not ...

Mr. Tatham: There was no guarantee of time frame, as I recall. It would not have been outstanding for a period of a year or such.

Mr. Shibley: Well, Mr. Tatham and Mr. Allan, perhaps I could help. I think I know what's bothering Mr. Allan, and there is this distinction that must be established. Pending the making of a firm contract, would any change in the interest rate have affected your negotiating posture if there had been follow-up negotiations with you?

Mr. Tatham: Yes. We had entered into a deal, a very major deal, recently, and we related the rental to the cost of money and for every one - I am not talking about Hydro now, but I am indicating the point, that for every one-eighth per cent change in the cost of money, the rental rate varied by six cents a square foot.

Mr. Shibley: And of course if there had been follow through of the negotiations with you by Hydro, and the cost of ~~the~~ money had varied upwards, you would have considered it necessary to stipulate for a higher rental?

Mr. Tatham: Oh definitely, yes.

Mr. Shibley: And conversely, had you been able to negotiate for money, at eight per cent, for example, or any lower rate than eight and three-eighths, this would have been a circumstance enabling you to negotiate for a lower rental rate?

Mr. Tatham: Yes.

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Mr. Shibley: Now once the commitment, however, was made, let's say that you rather than Canada Square had been negotiated with to the point where in October or November, 1972, you were actually signing a lease-purchase contract, once that contract was signed and the rental rate established therein, any subsequent variation in the rental rate could not, and would not, I am sorry, any subsequent variation in the interest rate of money could not, and would not, have affected your obligations to Hydro. Is that not so?

Mr. Tatham: Well it would be unusual. You can structure a deal any way you want.

Mr. Shibley: I am talking about what was intended by you in the submission of your proposal.

Mr. Tatham: In our submission, we made a submission predicated on the cost of money at the time which would be held open to us for a period long enough to conclude normal negotiations.



Tape H - 1184 follows

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~~(b) (1) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z) (aa) (ab) (ac) (ad) (ae) (af) (ag) (ah) (ai) (aj) (ak) (al) (am) (an) (ao) (ap) (aq) (ar) (as) (at) (au) (av) (aw) (ax) (ay) (az) (ba) (bb) (bc) (bd) (be) (bf) (bg) (bh) (bi) (bj) (bk) (bl) (bm) (bn) (bo) (bp) (bq) (br) (bs) (bt) (bu) (bv) (bw) (bx) (by) (bz) (ca) (cb) (cc) (cd) (ce) (cf) (cg) (ch) (ci) (cj) (ck) (cl) (cm) (cn) (co) (cp) (cq) (cr) (cs) (ct) (cu) (cv) (cw) (cx) (cy) (cz) (da) (db) (dc) (dd) (de) (df) (dg) (dh) (di) (dj) (dk) (dl) (dm) (dn) (do) (dp) (dq) (dr) (ds) (dt) (du) (dv) (dw) (dx) (dy) (dz) (ea) (eb) (ec) (ed) (ee) (ef) (eg) (eh) (ei) (ej) (ek) (el) (em) (en) (eo) (ep) (eq) (er) (es) (et) (eu) (ev) (ew) (ex) (ey) (ez) (fa) (fb) (fc) (fd) (fe) (ff) (fg) (fh) (fi) (fj) (fk) (fl) (fm) (fn) (fo) (fp) (fq) (fr) (fs) (ft) (fu) (fv) (fw) (fx) (fy) (fz) (ga) (gb) (gc) (gd) (ge) (gf) (gg) (gh) (gi) (gj) (gk) (gl) (gm) (gn) (go) (gp) (gq) (gr) (gs) (gt) (gu) (gv) (gw) (gx) (gy) (gz) (ha) (hb) (hc) (hd) (he) (hf) (hg) (hh) (hi) (hj) (hk) (hl) (hm) (hn) (ho) (hp) (hq) (hr) (hs) (ht) (hu) (hv) (hw) (hx) (hy) (hz) (ia) (ib) (ic) (id) (ie) (if) (ig) (ih) (ii) (ij) (ik) (il) (im) (in) (io) (ip) (iq) (ir) (is) (it) (iu) (iv) (iw) (ix) (iy) (iz) (ja) (jb) (jc) (jd) (je) (jf) (jg) (jh) (ji) (jj) (jk) (jl) (jm) (jn) (jo) (jp) (jq) (jr) (js) (jt) (ju) (jv) (jw) (jx) (jy) (jz) (ka) (kb) (kc) (kd) (ke) (kf) (kg) (kh) (ki) (kj) (kk) (kl) (km) (kn) (ko) (kp) (kq) (kr) (ks) (kt) (ku) (kv) (kw) (kx) (ky) (kz) (la) (lb) (lc) (ld) (le) (lf) (lg) (lh) (li) (lj) (lk) (ll) (lm) (ln) (lo) (lp) (lq) (lr) (ls) (lt) (lu) (lv) (lw) (lx) (ly) (lz) (ma) (mb) (mc) (md) (me) (mf) (mg) (mh) (mi) (mj) (mk) (ml) (mm) (mn) (mo) (mp) (mq) (mr) (ms) (mt) (mu) (mv) (mw) (mx) (my) (mz) (na) (nb) (nc) (nd) (ne) (nf) (ng) (nh) (ni) (nj) (nk) (nl) (nm) (nn) (no) (np) (nq) (nr) (ns) (nt) (nu) (nv) (nw) (nx) (ny) (nz) (oa) (ob) (oc) (od) (oe) (of) (og) (oh) (oi) (oj) (ok) (ol) (om) (on) (oo) (op) (oq) (or) (os) (ot) (ou) (ov) (ow) (ox) (oy) (oz) (pa) (pb) (pc) (pd) (pe) (pf) (pg) (ph) (pi) (pj) (pk) (pl) (pm) (pn) (po) (pp) (pq) (pr) (ps) (pt) (pu) (pv) (pw) (px) (py) (pz) (qa) (qb) (qc) (qd) (qe) (qf) (qg) (qh) (qi) (qj) (qk) (ql) (qm) (qn) (qo) (qp) (qq) (qr) (qs) (qt) (qu) (qv) (qw) (qx) (qy) (qz) (ra) (rb) (rc) (rd) (re) (rf) (rg) (rh) (ri) (rj) (rk) (rl) (rm) (rn) (ro) (rp) (rq) (rr) (rs) (rt) (ru) (rv) (rw) (rx) (ry) (rz) (sa) (sb) (sc) (sd) (se) (sf) (sg) (sh) (si) (sj) (sk) (sl) (sm) (sn) (so) (sp) (sq) (sr) (ss) (st) (su) (sv) (sw) (sx) (sy) (sz) (ta) (tb) (tc) (td) (te) (tf) (tg) (th) (ti) (tj) (tk) (tl) (tm) (tn) (to) (tp) (tq) (tr) (ts) (tu) (tv) (tw) (tx) (ty) (tz) (ua) (ub) (uc) (ud) (ue) (uf) (ug) (uh) (ui) (uj) (uk) (ul) (um) (un) (uo) (up) (uq) (ur) (us) (ut) (uu) (uv) (uw) (ux) (uy) (uz) (va) (vb) (vc) (vd) (ve) (vf) (vg) (vh) (vi) (vj) (vk) (vl) (vm) (vn) (vo) (vp) (vq) (vr) (vs) (vt) (vu) (vv) (vw) (vx) (vy) (vz) (wa) (wb) (wc) (wd) (we) (wf) (wg) (wh) (wi) (wj) (wk) (wl) (wm) (wn) (wo) (wp) (wq) (wr) (ws) (wt) (wu) (wv) (ww) (wx) (wy) (wz) (xa) (xb) (xc) (xd) (xe) (xf) (xg) (xh) (xi) (xj) (xk) (xl) (xm) (xn) (xo) (xp) (xq) (xr) (xs) (xt) (xu) (xv) (xw) (xx) (xy) (xz) (ya) (yb) (yc) (yd) (ye) (yf) (yg) (yh) (yi) (yj) (yk) (yl) (ym) (yn) (yo) (yp) (yq) (yr) (ys) (yt) (yu) (yv) (yw) (yx) (yy) (yz) (za) (zb) (zc) (zd) (ze) (zf) (zg) (zh) (zi) (zj) (zk) (zl) (zm) (zn) (zo) (zp) (zq) (zr) (zs) (zt) (zu) (zv) (zw) (zx) (zy) (zz)~~

Mr. Shibley: Right.

Mr. Tatham: That would be a period, say, of

six weeks, two months or something, to ~~see~~ find out whether you made a deal or whether you hadn't made a deal.

Mr. Shibley: Once you have made a deal, however,

once you have made a deal, let us say that as at October, 1972, the rental rate at which you could borrow money was eight and three-eighths per cent, you were prepared to sign a contract with Hydro to build on its existing site at a net rental rate of \$3.15 per foot. Is that correct?

Mr. Tatham: Yes.

Mr. Shibley: And that would be firm for 30 years,

regardless of any variation in the cost of money over the 30 year term?

Mr. Tatham: Well, the cost of money structured in is a developer's risk, once you have entered into the contract.

Mr. Shibley: Exactly. And, of course, you protect

yourselves against that risk in turn by getting a commitment from a lending ~~institution~~ institution.

Mr. Tatham: That's right.

Mr. Shibley: ~~from~~ as at the time you make the

transaction.

Mr. Tatham: That's right.

Mr. Shibley: Yes. And you get a commitment for

the whole 30-year term. Is that correct?

Mr. Tatham: I believe there is a suggestion in our

proposal that it might be open at the end of ten years.

Again, ~~this~~ this can be structured for the whole 30-year term, yes.

Mr. Shibley: You asked in your preliminary proposal

that Hydro consider that the matter be open after ~~ten years~~ ten ^{years}.

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Mr. Tatham: Interest rates are at a historical high rate and it was our judgement that with the passage of time they may come down, and in the event that they may come down, it might be prudent to have the right to reduce the rate.

Mr. Shibley: So that it could have worked in either direction?

Mr. Tatham: They can also go up, of course.

Mr. Shibley: Yes, it could have worked in either direction.

Mr. Tatham: Right.

Mr. Shibley: But in any event, Mr. Tatham, I think what this committee is interested in knowing is this: Your wording in that respect, and we have all read it, it was almost a request to be permitted to discuss this aspect with Hydro, but do I take it that if Hydro were insisting on a rate firm for 30 years, regardless of cost of money, Y and R Properties Limited were prepared to enter into that kind of transaction?

Mr. Tatham: Based on my understanding of the money markets of the time, that was possible, yes.

Mr. Shibley: Yes. Well, was it probable?

Mr. Tatham: I beg your pardon?

Mr. Shibley: Was it probable?

Mr. Tatham: Well, there are people in our organization far cleverer than I. You would have to ask our treasurer or chief financial officer this type of question.

Mr. Chairman: Mr. Henderson,

Mr. Henderson: These are the questions I wanted to ask, Mr. Chairman, but I'd only like one further clearance. Your proposal did include the ten-year interval?

Mr. Tatham: No.

28 Mr. Shibley: No.

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Mr. Henderson: Well, I thought he ~~proposed~~

Mr. Bullbrook: Have you read the proposal?

Mr. Henderson: No, I haven't.

Mr. Bullbrook: Well, you will find that it is
in the nature of a request to consider.

Mr. Henderson: So it is not part of the proposal
then, really?

Mr. Bullbrook: Oh, it is in the proposal, but
counsel has mentioned the very wording and I think perhaps
we should look at it then.

Mr. Chairman: While they are looking for that,
you ~~asked~~ ^{asked} a question, ~~it was with Mr. Shibley~~

~~Mr. Bullbrook: Were you satisfied?~~
Were you satisfied?
with the answer?

TATHAM: Financing. This proposal is based ~~on~~ ^{on}

Mr. Bullbrook: Excuse me, Mr. Tatham, ~~it's~~ it's towards
the end. ~~That's~~ That's exhibit 54.

Mr. Chairman: I hope everybody understood what's
going on.

Mr. Henderson: Go ahead. I'll take the witness's
word for it.

Mr. Tatham: Financing ~~and~~

Mr. Shibley: I can assist ~~the~~ - 54B the very last
page of that exhibit - financing - I'll read it.

"This proposal is based on a 30-year amortized loan
at eight and three-eighths per cent (three-quarters of one
per cent above the Ontario Hydro bond rate). We would like
to give consideration to the possibility of having the interest
rate open for a review at ten-year periods with a corresponding
rental adjustment".

Now, Mr. Tatham, I read that as meaning ^{and} please correct
my interpretation if I'm wrong, ^{that} that the proposal was based
on a 30-year amortized loan at eight and three-eighths, that if
the rate changed pending the making of the contract, you felt

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free to discuss it or negotiate it further?

Mr. Tatham: Yes.

Mr. Shibley: But once the contract was made,
you were prepared to commit at a rental rate for 30 years?

~~Mr. Tatham: Yes.~~

~~Mr. Shibley: And that as far as the substance~~

~~in that submission, what you were talking about is,~~

~~would Mr. Tatham be in a position to~~

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Mr. Tatham: Yes.

Mr. Shibley: And that as for the ~~the~~ last sentence in that submission, what you are talking about there is, would Hydro be interested in discussing, pending the making of a contract, the possibility of having the interest rate open at intervals of 10 years but you were not stipulating for it?

Mr. Tatham: Yes.

Mr. Shibley: All right.

Mr. Chairman: If you are still on this subject, Mr. Hodgson asked a question there and I am not sure that we heard the answer properly, or at least that I did.

Mr. R. G. Hodgson: I think I am satisfied, Mr. Chairman.

Mr. Chairman: Well, it was ^{as} to who was guaranteeing the credit that you were seeking on this.

Mr. Tatham: Oh, I am sorry. By virtue of the nature of the net lease, naturally the covenant ^a that is applicable is the covenant of the lessee, so it would be Hydro. I mean it is Y and R, but ~~the~~ the covenant that has meaning is the covenant on ^{the lease.} this.

Mr. R. G. Hodgson: I just wanted to make sure that you said ~~the~~ "covenant" because I thought it was a very important distinction when you were ~~bargaining~~ bargaining for ~~the~~ money.

Mr. Tatham: Yes. It is an ~~unimportant~~ important distinction but the money ~~market~~ ^{market} ~~was~~ of course recognized...

Mr. R. G. Hodgson: I just wanted to make sure that you....

Mr. Gaunt: So in effect then it is a lease assignment. Is that what you mean by covenant?

Mr. Tatham: Now again I don't profess to be an expert on money but I have been a key participant in many major loans over a period of time, [?] But the lending institution has, in addition to the security of the building, ~~they have~~ the security of the lease contract so that they have a dual security, and of

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(Mr. Tatham)

course with a covenant such as Hydro's you can't get any better.

Mr. R. G. Hodgson: It was ~~contingent~~ ^{contingent}

liability ^{on} Hydro.

Mr. Bullbrook: No, it is not contingent.

Mr. Shibley: It is a real liability ^{of} Hydro's

to pay the rent.

Mr. Chairman: *Continuing liability.*

Mr. McCallum: No, he said "contingent."

Mr. Bullbrook: Oh, I am sorry.

Mr. Hodgson: *"said contingent" but he means "continuing"*

Mr. Chairman: No, he said "contingent."

Mr. R. G. Hodgson: *"said contingent" but I meant "continuing"*

Mr. Shibley: Just to complete that topic introduced

by Mr. Gaunt, however, Mr. Tatham, by reason of the ~~un~~ availability of a covenant such as Hydro's in the sense that the obligations under the lease would be treated as a covenant, do I take it first of all that any lending institution would consider the lease obligations of Hydro to equate with a covenant to repay borrowed monies for example?

Mr. Tatham: Well, the layman interpretation to ~~that~~ that is yes.

Mr. Shibley: Yes. And in terms of the ability of a lessor such as Y and R to borrow money for this ~~area~~ project, the covenant of Hydro under the lease would be a most significant circumstance.

Mr. Tatham: Very definitely.

Mr. Shibley: In fact it would be a circumstance that would enable the developer to borrow the whole of the cost of the project.

Mr. Tatham: Could very well.

Mr. Shibley: Well, when you say it could...

Mr. Tatham: Well, there is no assurance that things are going to work out the way you plan. I have for a period of 19 years now developed a number of major office buildings, but we just went through a seven-and-a-half-months strike, an elevator strike, ~~and~~ which is a rather horrendous experience and therefore you have to qualify your position.

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Mr. Shibley: This is the other side of the coin, that when you are a developer you are at risk as to variables of cost of construction such as emanate from a strike.

Mr. Tatham: Very definitely.

Mr. ~~Shibley~~ Shibley: And such as emanate^t from a number of circumstances: escalation in cost of material or labour and other causes of ~~cost~~ delay.

Mr. Tatham: Well, the rental rate that is proposed and is struck is very much related to risk and the risks are in a number of categories: you have a construction risk; and again subject to the way ~~the deal is structured~~, the deal is structured, you have a money risk; a very ~~big~~ big risk for a developer today in the office building market is a leasing risk; ~~you~~ you may or may not have an operating cost risk, and you may or may not have taxes as a risk.

Mr. Shibley: All right. I'd like to go down those with you for the assistance of the committee. We really have embarked upon ~~what is a very high risk and in that respect Mr.~~

Tape H 1186 follows

July 11/73
11:40-11:45 am
PLG

(Mr. Tatham)

course with a covenant such as Hydro's you can't get any better.

Mr. R. G. Hodgson: It was ~~contingent~~ ^{or} contingent

Liability ^{on} Hydro.

Mr. Bullbrook: No, it is not contingent.

Mr. Shibley: It is a real liability ^{of} Hydro's

to pay the rent.

Mr. Chairman: ~~Contingent~~ ^{Continuing} liability.

Mr. McCallum: No, he said "contingent."

Mr. Bullbrook: Oh, I am sorry.

Mr. Shibley: He said "contingent" but he means "continuing."

Mr. Chairman: No, he said "contingent."

Mr. R. G. Hodgson: I said "contingent" but I meant "continuing."

Mr. Shibley: Just to complete that topic introduced

by Mr. Gaunt, however, Mr. Tatham, by reason of the ~~sub~~ availability of a covenant such as Hydro's in the sense that the obligations under the lease would be treated as a covenant, do I take it first of all that any lending institution would consider the lease obligations of Hydro to equate with a covenant to repay borrowed monies for example?

Mr. Tatham: Well, the layman interpretation to ~~that~~ that is yes.

Mr. Shibley: Yes. And in terms of the ability of a lessor such as Y and R to borrow money for this ~~area~~ project, the covenant of Hydro under the lease would be a most significant circumstance.

Mr. Tatham: Very definitely.

Mr. Shibley: In fact it would be a circumstance that would enable the developer to borrow the whole of the cost of the project.

Mr. Tatham: Could very well.

Mr. Shibley: Well, when you say it could...

Mr. Tatham: Well, there is no assurance that things are going to work out the way you plan. I have for a period of 19 years now developed a number of major office buildings, but we just went through a seven and a half months strike, an elevator strike, ~~at~~ which is a rather horrendous experience and therefore you have to qualify your position.

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PLG

Mr. Shibley: This is the other side of the coin, that when you are a developer you are at risk as to variables of cost of construction such as emanate from a strike.

Mr. Tatham: Very definitely.

Mr. ~~Sh~~ Shibley: And such as emanate^t from a number of circumstances: escalation in cost of material or labour and other causes of ~~and~~ delay.

Mr. Tatham: Well, the rental rate that is proposed and is struck is very much related to risk and the risks are in a number of categories: you have a construction risk; and again subject to the way ~~the deal is structured~~, the deal is structured, you have a money risk; a very ~~big~~ big risk for a developer today in the office building market is a leasing risk; [✓] You may or may not have an operating cost risk, and you may or may not have taxes as a risk.

Mr. Shibley: All right. I'd like to go down those with you for the assistance of the committee. We really have embarked upon ~~what is the risk for construction cost risk and in that respect~~ ~~Mr.~~

Tape H 1186 follows

July 11, 1973
11.45-11.50 a.m.
M.F.

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(Mr. Shibley)

what amounts to a construction cost risk, ~~and~~ ⁱⁿ that respect, ~~and~~
Mr. Tatham, by the way, do you want a break?

Mr. Chairman: I don't know whether he wants one but
I am getting a sign from my secretary over there that she
wants one, so on the ~~same~~ ^{ten} basis of her request we are
adjourned for five ^{or ten} minutes.

Mr. Tatham: All right, thank you.

The committee recessed briefly.

Tape H - 1187 follows

July 11, 1973
12.00-12.05 pm
V.H.

Mr. Chairman: I call the meeting back to order.

Mr. Shibley: Before the recess, Mr. Tatham, we were talking about the risk elements inherent in a project of this kind which confront the developer, and we had started with the risk attendant upon the construction of the building itself. Would you please tell the committee members what you know of that?

Mr. Tatham: What are the risks of construction?

Mr. Shibley: Yes.

Mr. Tatham: The construction industry is not noted as being the most stable ~~and~~ ^A project of this size and importance is such that it is often used as a target by unions in the event that ^{at} the particular point in time that the building happens to be built that the contracts were coming up for negotiations, ^{they} they usually pick on the larger projects and the ones of prominence, and for that reason I would suggest that the construction risk on a project of this size and importance is higher than you would run into with a smaller project. The risks of construction are very real. They run not only to the risk of strike but also to weather. The nature of the industry today is such that the general contractor usually has very small forces of his own and most of the work is contracted out, so that the risk is a shared risk amongst all the major subcontractors. ~~So that~~ ^{The} risk that the developer in fact runs, even if the developer has his own general contracting company, the risk that the developer runs is primarily a risk of time and the risk of money associated with time. In other words, if you take a situation such as the recent elevator strike, subject to the point in time that that affects you, subject to the amount of dollars that you have invested in the project, your interim financing costs run notwithstanding the fact that your sub-trades may be held to the contracts that you have negotiated with them.

July 11, 1973
12.00-12.05 pm
V.H.

Mr. Shibley: And there is also a delay in the time of revenue receipts, from the building?

Mr. Tatham: Very definitely.

Mr. Shibley: Yes. So you are so to speak suffering from both ends - from the circumstance of cost of interim financing being added to your cost of construction and a delay of the period when you would realize revenue.

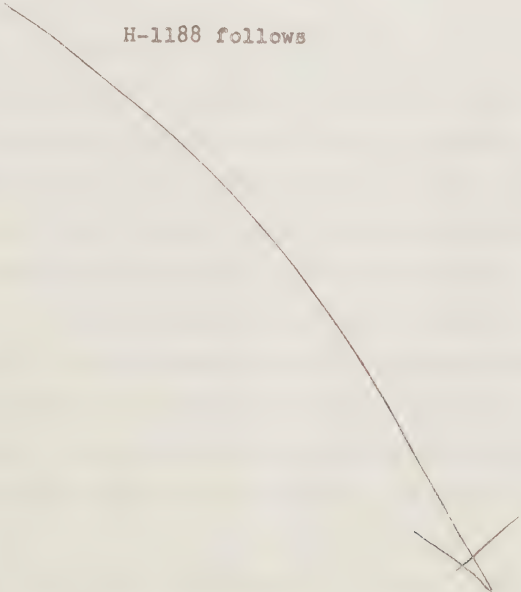
Mr. Tatham: Yes. And, of course, there can be further penalties, too, subject to the way the deal is structured in the event that you have a whole series of leases. I am talking about a general condition, not a specific one.

Mr. Shibley: ~~Now then,~~ when you make a proposal, however, and peg a rental rate is the element of risk as it relates to the construction of the building taken into account in the pegging of that rate?

Mr. Tatham: Yes.

Mr. Shibley: So that although there is a risk attendant upon

H-1188 follows



July 11/73
12.05 to 12.10 pm
fvk

(Mr. Shibley)

~~into account in the pegging of what was paid to what~~

~~Mr. Tatham: Yes.~~

~~Mr. Shibley: Although there is a risk attached to~~

the construction - the obligation to construct the building, these risks, recognized and known to the developer, are a factor that is included in the computation of the rental rate proposed by him?

Mr. Tatham: Yes.

Mr. Shibley: And, of course, if the risks do not come to ~~fruition~~ ^{fruition}, let's say that you have happy labour relations, there is no delay and so forth, then, of course, that's an added plus, if I may use that expression, to the developer?

Mr. Tatham: The answer to that is yes, but the nature of the industry today is that it's so competitive that there's not much left in there.

Mr. Shibley: In respect of risk again, another element you mentioned was the ^{risk} ~~element~~ of money. Would you please elaborate on that?

Mr. Tatham: I'm speaking again of a general not a specific. If you make a proposal ~~for~~ to a tenant of sufficient size, that that ~~ten~~ tenant is, say, a major tenant and is a starting tenant of a new building project, in your feasibility analysis you make a judgement as to the cost of money subject to the duration of negotiations, whether they be quick or whether they be slow, you are at risk in the current money market as to whether that will change, therefore, we have ~~and~~ entered into deals through which we made a projection of a cost of money at one rate and have ended up paying a substantially higher rate because, when we made the proposal and when we made the deal, were two different points in time.

Mr. Shibley: Yes. Now is ^{it} ~~not~~ usual, however, that you make your deal for the development of the building and receive your commitment for funds, more or less, simultaneously?

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12.05 to 12.10 pm
fvk

(Mr. Tatham: That is the ~~more~~ prudent way of doing it and, certainly, on a deal of this size that would be the way of doing it. No developer could afford to do it otherwise.

Mr. Shibley: So again that risk is really eliminated if the developer receives a commitment for the funds required to construct the building as at the time he is also making his deal with the lessee?

Mr. Tatham: If those two things are concurrent, yes.

Mr. Shibley: Yes, all right. Just returning for a moment, I overlooked asking you, in terms of cost of construction, is the circumstance that the per square foot cost is pegged at a high rate? ~~in this case~~ In this case, the rate, I might tell you, was \$34 per square foot. Is that a circumstance that mitigates against the risk that the construction of the building would cost more than anticipated by the builder?

Mr. Tatham: I'm not certain that I fully follow your question, Mr. Shibley. If you are saying that in that figure of \$34 a square foot is there a substantial contingency which would offset any such risks, ~~is~~ that the question?

Mr. Shibley: What I want to know is, if a deal is structured on the basis that the building is going to cost \$34 per square foot as opposed to costing \$30 per square foot, are the risks which confront the developer reduced?

Mr. Tatham: There is a whole education in a square foot and there is a ~~whole~~ whole education in cost, so before I answer any question I'd like to ~~am~~ be absolutely sure that I know what we are talking about. A general contractor likes to think in terms of a gross square foot and a gross square foot to some contractors ~~is~~ general ~~contractors~~ ~~is~~ the outside fenestration and includes all area of a building below grade. To me, as a developer, that's an entirely erroneous figure. ~~It is a gross square foot~~

(Tape H-1189 follows)

July 11, 1973
12.10 - 12.15 p.m.
M.R.

(Mr. Tatham)

~~to me as a developer that is an entirely irrelevant~~
~~figure~~ It has really no meaning. The only figure that has any meaning is what it costs per rented foot. Then there is the area of cost. What is cost? Are we talking about construction cost? Are we talking about costs with professional fees? Are we talking about costs with interim financing?

Mr. Shibley: Yes.

Mr. Tatham: ~~I would agree that that is a figure that you~~

~~have to~~ And then it is not really meaningful unless you specifically know in detail the structure of the building. In other words, we have built buildings which have a high ratio say, of garage to office space. The gross per-square-foot cost is exceptionally low, ^b because the relationship of the low cost component to the high cost component is high. Therefore, just to bandy figures about ...

Mr. Shibley: What I'm thinking about is whatever portion of the \$34-per-square-foot element is related to construction cost, as opposed to cost of design, cost of interim financing, construction costs forming some element, and that cost being increased so as to make the overall cost \$34 per square foot as opposed to an overall cost of \$30, taking ~~design~~ design as being a constant, interim financing again would be even less, at a lesser cost per square foot of construction, but even leaving that constant, would not the circumstance that the cost of construction, which was pegged by Hydro for this building, was higher than was proposed by some developers mitigate against the risk, normally attendant upon the obligation to construct the building?

Mr. Tatham: I would say the answer to that is yes.

Mr. Shibley: Yes. All right. Now, then, you also mentioned leasing as a risk usually attendant upon the development of a building.

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M.R.

(Mr. Shibley)

Would you please explain that to the committee?

Mr. Tatham: This is the single greatest - the biggest risk that a developer has. This is far greater than the risk of construction. It's far greater than the risk of money. It's far greater than ^{the} risk of ~~an~~ operating costs.

Mr. Shibley: Now, you are talking generally this is so?

Mr. Tatham: I'm talking about a general case or related to this specific, where there is a lease of the entire building by a covenant ~~and~~ which cannot be improved upon. That is the best possible set of circumstances and warrants the lowest possible rent

Mr. Shibley: Just stopping there, Mr. Tatham, I want the committee to fully understand this. ~~Remember~~ You are telling them, are you, that what would otherwise be a very substantial risk relative to leasing the building is not a risk when dealing with one prime tenant with a covenant such as Hydro ~~committing~~ obligating itself to rent the whole of the building?

Mr. Tatham: Yes.

Mr. Shibley: In this case, the whole of it, I think, other than the commercial area. So that, now, comparing that situation with what a developer is normally confronted with, what is the usual risk attendant upon leasing?

Mr. Tatham: Well, the cost of leasing in the current market in the City of Toronto today is very high, from two points of view.

~~It's high just because of~~

July 11, 1973
12.15-12.20 p.m.
M.F.

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(Mr. Tatham)

~~in the city of Toronto today is very high from the point of view of~~

~~it~~ It is high just by virtue of the nature of supply and demand where you have a situation in which there is a greater amount of office space on the market currently than there are tenants requiring that space, and because of that you are in a lessee market as opposed to a lessor market.

Therefore, there are low rental rate figures and tenant inducements that you would not normally provide, but the other risk is the risk of carrying vacant space in the event that the building you put on the market is not fully leased, and the cost of carrying this space can be onerous, particularly if the tax department, for example, wants to get taxes on the vacant space. I might as well put that plug in while we are here.

Mr. Shibley: You have mentioned two things so far; you have mentioned lessee allowances. By that ^{for} you mean an allowance that normally you would be required to make as lessor to a lessee of so much ^{per} square foot to permit the lessee to make tenants' improvements?

Mr. Tatham: Yes, well, historically there was no such thing as improvement allowance. That is depending on how long you have been in the business. Then it became quite normal to have a dollar a foot, and then it has gone to two and now there are deals being made on a turnkey basis and what have you.

Mr. Shibley: When you say on a turnkey basis, ~~and~~ then there are deals being made where carpeting, interior finishes, etc., are all in. Is that correct?

Mr. Tatham: In some cases, yes.

Mr. Shibley: And generally an allowance of two dollars a square foot is being made for tenants' improvements such as we have been talking about?

Mr. Tatham: Yes.

Mr. Shibley: And of course in the circumstances of

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(Mr. Shibley)

this case the lessor dealing with Hydro was confronted with what in that connection?

Mr. Tatham: There were no allowances. As a matter of fact, it was not necessary to put resilient tile on the floor because Hydro with their office landscaping concept were going to carpet throughout. Therefore, you just needed to have a finished concrete floor.

Mr. Shibley: So it is only a finished concrete floor that the developer produces; the carpeting was at Hydro's cost?

Mr. Tatham: Yes.

Mr. Shibley: Can you comment further in that connection as to tenants' improvements?

Mr. Tatham: Well, the nature of that aspect of the requirement was low, that is, the concept of office landscaping with no requirement for an underfloor duct system. The overhead wiring system, assuming the poles are not supplied by the developer, but are supplied by the tenant, is less costly to the developer than an underfloor duct system.

Mr. Shibley: And in terms of wall finishes, Mr. Tatham?

Mr. Tatham: Wall finishes - I don't think there is anything specified, I think it is just a painted wall.

Mr. Shibley: What about the lack of partitioning or the need for interior hardware emanating from the landscape concept?

Mr. Tatham: ~~Well~~ Normally you do not become involved on interior partitions, other than those that are required by law. For example, it is mandatory under our building code to have a fire exit corridor exchange approximately every five floors in a high-rise building, so that you are forced to interconnect your stairwells with a corridor, and that would hold true in office landscaping concept.


In normally dealing with a large tenant, subject to the decisions that tenant makes, and some of the largest tenants are

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(Mr. Tatham)

tending toward this office landscaping concept. This does not ~~■~~ hold true for a multi-purpose office building where you are catering to legal offices and accounting offices and insurance offices and other types of uses of this type. I don't know whether I am getting the thrust of this for you.

Mr. Shibley: Well, I ~~just~~ just want to return to base here for the moment. We were talking about the usual risk attendant on leasing ~~and~~ and I think in essence you have said the risk to



Tape H - 1191 follows

(Mr. Shibley)

~~...the cost of an allowance to the lessee for leasehold improvements, the vacancy costs being the major costs of leasing. You mentioned that would be space that is not rented for variable periods of time while you are in the leasing process, and throughout the term, or in this case 30 years, you would be confronted with vacancies from time to time, and you've mentioned other things as well, but do I take it then, against that background, Mr. Tatham, that in dealing with a ~~commercial~~ development such as you were with Hydro, the risk attendant on the usual development as it related to leasing did not exist?~~

Mr. Tatham: That's right.

Mr. Shibley: There was no such risk?

Mr. Tatham: No.

Mr. Shibley: All right.

Mr. R.G. Hodgson: Wouldn't it be minimized? I thought that ~~they were~~ ^{that} ~~part of this?~~ ^{part of this?}

Mr. Shibley: Perhaps Mr. Tatham you can answer that?

Mr. Tatham: I am sorry, I didn't hear.

Mr. Shibley: Hydro is obligated under the specification, I believe, to lease the whole of the building, other than the commercial area? That's correct is it not?

Mr. Tatham: The proposal we made was on assumed obligation for about million square feet of office space.

Mr. Shibley: And then although Hydro itself was not to occupy a million square feet, the obligation and risk attendant on subletting, so to speak, the area not used by Hydro was at Hydro's risk?

Mr. Tatham: Yes.

Mr. Allan: Wasn't the commercial leased as well, and then re-leased?

Mr. Chairman: I think that is the point that Mr. Hodgson was getting at....

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12.20-12.25 pm
V.H.

Mr. Shibley: Yes, You are right. I think ...

Mr. Chairman: ... the part about the ...

Mr. Tatham: We never got into that level of discussion...

Mr. Shibley: I am sorry.

Mr. Tatham: ... in our proposal.
covenant

Mr. Allan: The ~~leasehold~~ would cover the whole building I should think.

Mr. Shibley: Yes. Mr. Allan's ^{an} point, the covenant for rental was for a rental of the whole of the premises.

Mr. Tatham: Well you can't get a better condition than that.

Mr. Shibley: You ~~can't~~ ^{can't} get a better condition than that?

Mr. Tatham: No.

Mr. Chairman: But in your proposal, the one that Y & R made, who was responsible for the covenant on the property or the part that was to be rented out for stores?

Mr. Tatham: We were.

Mr. Shibley: All right. Now you mentioned collaterally the current difficulty of letting commercial space

Mr. Tatham: Only in some areas/

Mr. Shibley: IN some areas? And it might assist the committee, I remind the members of the committee that there is evidence before you as to a certain amount of space which Hydro will be obligated to lay-off so to speak as at the date of completion of this building including existing space occupied by it and including the surplus space in the new building; can you give us any assistance whatever, Mr. Tatham, as to the what you anticipate now to be the situation in 1975, which is the projected time of Hydro moving into this building respecting its opportunities to lease - I wish I had the figure now but it runs to some hundreds of thousands of square feet of excess space - There will be in this building alone some 400,000 square feet of excess space and then Hydro has other areas in which it is a tenant.

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V.H.

Mr. Tatham: I don't quite know what the relationship is between Hydro and the provincial government, but the logical user is the provincial government. They are right adjacent to it and if there were a growth requirement there, I would think that the risk might be quite low.

Mr. Shibley: Right.

Mr. Tatham: If you are asking me, you know, if there wasn't a possible advantage to both parties in such a transaction of what the current rental market is in the city of Toronto, I can just say it is very competitive.

Mr. Shibley: So that ...

Mr. Tatham: Now, there is an offsetting ~~Aside~~, by the way, and I don't want to, although in this set of circumstances where the entire building is leased by a major tenant

H-1192 follows



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12:25-12:30 pm
PLG

(Mr. Tatham)

~~Building leased by a major tenant, this is extremely low risk,~~ On the other side of the coin there is no future opportunity to the developer for gain. By that I mean, in the conventional office building development there is the possibility that with the passage of time and certainly in our society where we have had inflation now for many many years, the developer always has the opportunity of recouping any loss or getting an improved return on his investment by virtue of a five-year lease or a ten-~~year~~ year lease roll-over, so I didn't want to

Mr. Shibley: It is fixed both ways.

Mr. Tatham: Fixed both ways.

Mr. Shibley: And we will be talking later together about the return to the developer, which as you say is fixed. It can't increase but it is not going to be lowered either by the prospect of vacancies or the prospect of the building not being competitive.

Mr. Tatham: Oh no, it is a good deal.

Mr. Shibley: Yes. Now then, you mentioned in ~~terms~~ terms of the sub-letting of the surplus space, that if government were to take it up, the risk in that respect should be low, but otherwise the situation is very competitive.

Mr. Tatham: Well, the nature of the location is that ~~if~~ if government doesn't take it up they will ~~have~~ have a great deal of trouble in my judgment.

Mr. Shibley: I see. Why do you say that, Mr. Tatham?

Mr. Tatham: Well, the nature of ^a University Avenue [^] location is that it is non-commercial. The hub and heart of the city is not there.

Mr. Shibley: Yes. And does that hold true for office-type accommodation as well as commercial, in the sense that it is not as competitive with other locations for office,

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PLG

Mr. Tatham: The answer to that is yes.

Mr. Shibley: Are you saying that the market is better for office space, let us say, on Bay Street between King and Front than it would be here?

Mr. Tatham: There is no comparison.


Mr. Shibley: Would it be better at Bay Street at College Street, where you were proposing the Park Centre development?

Mr. Tatham: Definitely yes.

Mr. Shibley: So that even vis-a-vis the sub-letting by Hydro of its surplus office space, you viewed the Park Centre site to be ~~comparable~~ superior. All right, now while we are still on this subject and to complete it, we know that your firm had certain views, very strong views, about the locating of commercial premises within this site. ~~Because~~ Because we have your views in depth in writing, I ~~would~~ ^{just} asked you to comment on it in a summary way.

Mr. Tatham: Well we have some experience in this area. ^A ~~the~~ building of the order of a million ~~sq~~ square feet with a captured population has a requirement for certain amenities and services, but the nature of the building requirement for these services is such that they are not necessarily profitable. For example, ^A ~~restaurant~~ restaurant usually ~~has~~ has to be subsidized. You can make a profit out of something like a convenience shop such as the United Cigar Store might provide, or something of that kind, ~~that~~ that can provide a profit and can provide a good return per square foot. A barber in a very small way might make an existence and might be able to pay a modest rent, but a shopping centre as such, women's shops, men's shops, this type of thing, ~~it~~ it just ^{isn't} ~~isn't~~ there.

Mr. Shibley: Mr. Tatham, the arrangement ~~was~~ between Hydro and Canada Square is such ~~that~~ that if more than ~~s~~ six dollars a square foot is realized for the commercial premises, Hydro is to share in that. ~~Is~~ What is your view as to the prospect




H 1192-3

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12:25-12:30 pm
PLG

(Mr. Shibley)

of a ~~benefit~~ benefit to Hydro in that a respect?

Mr. Tatham: Well you are talking about a very
long lease and with continuing inflation, who is to know, But



Tape H 1193 follows

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12.30 to 12.235 pm
fvk

(Mr. Tatham)

~~..... talking about a very long lease and was continuing~~
~~institutions who is to know best~~ on the current market other than
~~institutions~~ ^{for} institutions such as a bank, which should pay substantially
more than that, certainly a restaurant wouldn't, ^a barber shop
is not likely to, ^a ~~a~~ cigar shop would. Other than for
inflation I would suggest that there is not a great deal.

Mr. Shibley: All right. I want to go forward with you
on the elements of risk that normally confront ~~the~~ ^a developer and
compare ~~it~~ ^{them} with the risk attendant on this project to a developer.
There is the element of taxes, and, I believe I'm correct that
in this case, the specification was that taxes would be for the
account of Hydro.

Mr. Tatham: Yes, taxes are for the account of Hydro.

Mr. Shibley: And whatever was the risk attendant in that
respect, ~~was~~ that was no risk to the developer?

Mr. Tatham: No.

Mr. Shibley: Finally, we've come down to the item of
operating costs. In this connection, Mr. Tatham, you've already
mentioned a large number of buildings that came under the Y and R
management. I take it that your firm is particularly experienced
in the field of office management.

Mr. Tatham: We've been at it for a long time. We've
been managing office buildings now for a period in excess of
50 years.

Mr. Shibley: Yes.

Mr. Tatham: I'm sorry.

Mr. Shibley: I'm sorry, go ahead.

Mr. ~~Shibley~~ Tatham: It has been my responsibility, ~~to~~ for
the past 19 years, ^{to} have total responsibility for the ~~the~~ operating
management. We have, I think, earned a reputation in the city
of Toronto as being good property managers. We keep a very
sophisticated cost account system whereby we cost out each
segment of the operating costs of the building and we've related
to gross square foot; ^{a cleanable} We've related to ~~obtainable~~ square foot;

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fvk

(Mr. Tatham)

~~We~~ We've related to a net rentable square foot. We compare our buildings one to another and, based on that, we made a judgement, that judgement was mine, as to ~~the~~ the operating costs of a building of the order of a million square feet, which I've indicated before, is a very efficient type of building to run, that you can maintain this at the rate of \$1.35 per square foot to a very high ~~standing~~ standard.

Mr. Shibley: In 1974.

Mr. Tatham: In 1974.

Mr. Shibley: So you're talking about 1974 prices?

Mr. Tatham: Yes.

Mr. Shibley: Members of the committee, for your interest, as part of the exhibit you'll see the in-depth study ~~on~~ on the cost of maintenance as part of the material. It's really summarized on this shorter ~~typed~~ typed page of figures which is preceded by a series of seriatim breakout of such things as heat ~~with~~ ^{with} account of outside services ^C, heat costs recovered, plumbing wages, ~~plum~~ plumbing, water purchases, elevator repair wages, down to the last detail in terms of cents per square foot of costs. I take it, Mr. Tatham, you made an evaluation, or an appraisal, of the cost of maintenance for this particular project?

Mr. Tatham: Yes.

Mr. Shibley: I notice on the typed sheet, I'm trying to assist the members, it's this document here. On the bottom of that ^{in the} right-hand corner, you've got 1974, \$1.35 per square foot, which is an increase over the totals indicated on this sheet, those totals being current costs of various buildings managed by your firm.

~~Mr. Shibley: Yes.~~

~~Mr. Shibley: So as whereas you are~~

(Tape H-1194 follows)

July 11, 1973
12.35 - 12.40 p.m.
M.R.

~~(Mr. Shibley)~~

Mr. Tatham: Yes.

Mr. Shibley: So that, whereas you are presently confronted with costs ranging from \$1.07 to \$1.19 per square foot, that is to be compared with a projected cost of \$1.35 upon which your proposal was predicated. Is that correct?

Mr. Tatham: Yes.

Mr. Shibley: And in that connection, therefore,

Mr. Tatham, ~~whereas~~ I think the committee is anxious to know just how variable the cost of maintenance would be as at 1974 from your projection or is this ~~as a~~ close approximation of what you truly expect will be the case at that time?

Mr. Tatham: Well, I think that historically you've able to been/quite accurately predict operating cost increases. The biggest increases, likely to occur in the course of energy, and particularly if they start throwing things around like a seven per cent tax, which was unheard of and has been subsequently - this type of thing was not anticipated by myself in my operating costs analyses.

Mr. Shibley: Of course, here the cost of energy for this building was for the account of Hydro.

Mr. Tatham: Only part of it. Only part of it.

Mr. Shibley: I see. Well, then, let's go into that. The cost of energy for lighting and heat would be for the account of Hydro?

Mr. Tatham: No. The nature of the standard ~~base~~ lease in the city of Toronto is that the tenant will pay the electricity for lighting and office equipment and a computer if he should have it. But the building owner supplies all the electricity to run the elevators, the airconditioning equipment, the heating equipment and/or anything that is required for building services.

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M.R.

Mr. Shibley: Now, in this case, what was the specification?

Mr. Tatham: It was the standard lease.

Mr. Shibley: I see. All right.

Mr. R.G. Hodgson: Does that include standby power units or anything of that nature?

Mr. Tatham: Yes. As part and parcel of the current building code, you are required to have standby power of a size adequate to keep stairwell lighting on and a series of lighting on floors and to take one elevator down at a time.

Mr. R.G. Hodgson: This is the reason for the separation, is it? In most cases?

Mr. Tatham: Oh no. No, the separation - it is standard practice in the city of Toronto. It's a practice that has evolved and developed over many years for the electricity which is consumed by lighting and office equipment to be paid for by the tenant and all other electrical energy required for the building services to be paid by the landlord.

Mr. Shibley: I want to be clear on this, Mr. Tatham, so that we may be able to compare it with the actual terms of the contract with which we are concerned. Are you telling this committee that as part of the services that you were prepared to provide and include in the rental rate proposed was some of the energy costs of this building?

Mr. Tatham: Oh, yes.

Mr. Shibley: And what were they?

Mr. Tatham: The electricity that would be consumed to run the elevators, to run the airconditioning equipment, to run the heating equipment and to run any of the motors and fans that are associated with the airconditioning, but I have umbrellaed that ^{in air conditioning} to run any of the equipment that is required to make the building perform and function.

Mr. Shibley: All right.

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(Mr. Shibley)

~~Now then~~
Mr. Deans: Can I ask a question?

Mr. Shibley: Sure.

Mr. Deans: Thank you. When you say to run the ~~on~~ equipment, are you saying that it was your responsibility to heat the building?

Mr. Tatham: Yes.

Mr. Deans: And to aircondition the building?

Mr. Tatham: No, the heating is primary ^{is} done by the way by the lights. The problem in a building of this type particularly is to cool it even on a zero day.

Mr. Deans: ~~I don't really want~~ I just want to be sure that I understand that you are not just talking about the Hydro to run the motor that - or whatever. You are talking the actual provision of all the heat and all of the airconditioning for the building was your responsibility?

Mr. Tatham: The electricity for it, yes, and the equipment, yes.

Mr. Shibley: Mr. Tatham, I think we have now covered the topic of what risks are usually attendant upon a development and you have been able to compare it for us with the risk confronting the developer referable to Hydro's building.

I want now to direct your mind to the ~~the~~
~~statement~~...

H-1195 to follow

H - 1195 - 1

the matter of standards that were set by Hydro. You have mentioned such things as floor loading, and I gather that was an extraordinary item. Did you cost that in your proposal?

Mr. Tatham: Yes.

Mr. Shibley: The 150 lbs. per square foot loading would be an extraordinary item but for which you had made an allowance of ~~the~~ ^{How} much?

Mr. Tatham: Well current - I shouldn't say current practice in the industry, I guess every developer has his own practice - but the building code requirement for ~~the~~ office building in the city of Toronto is 75 ~~lbs.~~ lbs. per square foot, which consists of a live and a dead load requirement of 50 and 25 lbs. respectively.

Our conventional practice is to design a building for 100 lbs. per square foot and to not have the columns designed or engineered to carry this throughout. The 150-lb. floor loading on a million square foot building of this type, as compared to 100-lb. floor loading, would require a premium of approximately \$200,000.

Mr. Shibley: And in the proposal you submitted you had built in such an allowance?

Mr. Tatham: We put in that \$200,000.

Mr. Shibley: Then with respect to lighting levels, did you also make an allowance in terms of the cost of establishing 150 ~~foot~~ candle, ~~power~~ at desk level?

Mr. Tatham: Yes, the premium for 150 foot candle lighting as opposed to 100 foot candle lighting is about \$550,000.

Mr. Shibley: You have the contract document in front of you, it is the black bound volume there, on page four again of the specifications, which is found at about one-third of the way through, schedule C.

Mr. Walker: No, you are not looking at the right spot.

H - 1195 - 2

Mr. Tatham: ~~It is not on page four.~~ It is not on page four.

Mr. Shibley: No, there is a schedule about a third of the way through the volume, I perhaps should come down and help.

Mr. Tatham, item 19 in the specification reads:

"All floors above ground level, as our ground floor, will have a carrying capacity of 50 lbs. per square foot live load, or the equivalent of 150 lbs. per square foot pointloading for a maximum area of 16 square feet, 4 by 4 per bay, plus a partition load of 25 lbs. per square foot.

"The ground floor and upper and lower concourse floors will have a carrying capacity of 100 lbs. per square foot. All floor finishes will be concrete finish for broadloom to be installed by Hydro unless otherwise noted," etc."

Now reading the specification there as actually entered into with Canada Square, did that specification accord with the specification for loading upon which you were asked to quote?

Mr. Tatham: Oh no, it is 50 per cent of it.

Mr. Shibley: It is only half?

Mr. Tatham: Yes.

Mr. Shibley: And would that make a material difference in the cost of constructing this building?

Mr. Tatham: Well it would make something of the order of a quarter of a million dollars difference.

~~Mr. Tatham: I am not sure of the exact figures.~~

Tape H - 1196 follows

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12.45 to 12.50 pm
fvk

(Mr. Tatham)

~~... it would make something of the order of a million dollars difference~~

Mr. Shibley: Yes. So again, the downward adjustment of loading, it would affect ~~the~~ ^a salvage to the builder of a quarter of a million dollars. The downward adjustment of the lighting from 150 foot-candle power to 100 that we previously read, would that effect ~~the~~ ^a saving of the \$550,000 that you allowed in your calculations?

Mr. Tatham: Yes, and there's a further saving in the mechanical by virtue of reducing the lighting load of an equal amount.

Mr. Shibley: Of another \$550,000. Is that correct?

Mr. Tatham: Yes.

Mr. Shibley: Why is that?

Mr. Tatham: As I explained earlier, the main problem in office ~~buildings~~ buildings today is not to heat them but to cool them, and with a lighting level of 150 foot-candles, you are consuming electrical energy at about the rate of ~~the~~ ^{six} watts per square foot of rented area. When you reduce that to 100 foot-candles you reduce the electrical energy consumption to about four watts per square foot. As a consequence, the equipment necessary to cool the building can be substantially reduced in size.

Mr. Shibley: So just in summary, for the benefit of the committee, the variation in the specification upon which you were asked to submit your rate referable to floor-loading would mean a difference in cost of a quarter of a million dollars. The difference in lighting would mean an additional downward adjustment of cost of another ~~that~~ \$1,100,000, being \$550,000 for the lighting itself and another \$550,000 for the mechanical. Is that correct?

Mr. Tatham: Yes.

Mr. Shibley: And that's for a total downward saving in construction cost of \$1,300,000. Is that correct?

Mr. Tatham: Yes. Actually about \$350,000.

Mr. Shibley: I'm sorry, \$1,350,000.

Mr. Bullbrook: One, three-fifty, right.

Mr. ~~Shibley~~ Shibley: ~~Member~~ In addition to that \$1,350,000,

Mr. Tatham, did you make an allowance for other custom requirements?

Mr. Tatham: Yes, we had an allowance of, I believe, it was \$600,000 for custom~~er~~ requirements.

Mr. Shibley: When you talk of allowance for custom requirements, what do you mean by that?

Mr. Tatham: There were certain features which Hydro required. For example, offices ~~work~~ executive from boardroom, 14,000 square feet; medical suite involving, seven two-piece washrooms; storage for dead files, a vault; private elevator; a conveyor; meeting room~~and~~ and our allowance for those was \$600,000.

Mr. Shibley: And did you compare that with the allowances - I'd ask you to compare it with the allowances on a page six of the specification. You notice⁷ the following allowances are being carried by Canada Square as ~~the~~ cost of finishes allowed for in the agreement: pools and fountain - \$25,000; finishes on outside walkways and landscaping - \$100,000; column cladding on all exposed columns on the ground floor - \$25,000; partitioning and interior finished for executive offices - \$60,000; for an overall total of \$210,000.*

Mr. Tatham: But we're not talking about the same thing.

Mr. Shibley: That's what I wondered. Are we talking about the same thing?

Mr. Tatham: No. The only think that I can see there is \$60,000 instead of \$600,000.

Mr. Shibley: I see. Are you telling me that you made an allowance of \$600,000 for interior - I'm sorry, finishing¹ and partitioning ~~for~~ for the executive offices in the submission you made?

Mr. Tatham: Yes.

Mr. Shibley: And that is to be compared with the allowance of only \$60,000?

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fvk

Mr. Tatham: I can't make that.

Mr. Shibley: No, when I say compared, I'm sorry. And do you - getting back to it. When you say that you allowed \$600,000, you're talking about \$600,000 for partitioning and interior finishes for ~~y~~ executive offices?

Mr. Tatham: No, the list of things that I read out which we were asked to - I read it to you just a minute ago. I can find it again here in our - Custom requirements are offices, executive and boardroom - 14,000 square feet.

Mr. Shibley: How much did you allow for that?


Mr. Tatham: I don't have a separate breakdown. I ~~can~~ could find it. I don't have it here.

Mr. Shibley: All right. Carry on.

Mr. Tatham: I could find it in my file.

Mr. Shibley: Let's just stop there. What do ~~you~~ have to save in allowances ^{of} \$60,000 for executive offices?

Mr. Tatham: I can relate it, It would build about 10,000 square feet of executive offices, subject to whatever - This is like asking how long is a piece of string. We've had tenants ~~partitions~~ - partitioned allowances go anywhere from \$1.00 a square foot to \$15.00 a square foot just for partitioning. It very much depends upon the quality and the number. ~~is my working papers~~



(Tape H-1197 follows)

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12:50-12:55 pm
PLG

(Mr. Tatham)

~~depends upon the quality and the number.~~ I can find in my working papers the actual figures that we related to each of these custom requirements, if you would like.

Mr. Shibley: Really, Mr. Tatham, I don't know whether that is as important as it is for the committee to try and understand -- you see, we are down to a case of a \$1,350,000 worth of changes from the standard set upon which you were asked to make a submission and those which ultimately formed the basis of the Canada Square agreement. I am interested to know whether the further allowance by you in your proposal of \$600,000 for which you call custom requirements can in similar way be compared with what was ultimately specified to be provided by Canada Square. Can you ~~axi axxi~~ assist me at all in that area?

Mr. Tatham: Well, if the entire analysis is, ^{as} ~~is~~ if the form of allowances is ~~on~~ ^{as} this sheet of paper, then I would suggest that it looks to me like it is \$60,000 compared to \$600,000.

Mr. Shibley: So then you are saying that if these are the only allowances made, that ~~are~~

Mr. Tatham: Well, we in our estimate had separate allowances for exterior finishes and they were larger than \$100,000. That was also ⁱⁿ our estimate, but they are not allowances within the meaning of this ~~xxx~~ discussion.

Mr. Deans: May I ask if what you are talking about is on page 2 of ~~Page~~ Project X, budgets A, B, and C. It says: "Ad~~for~~ custom requirements, executive offices and board rooms \$100,000."

Is that the figure that you ~~are~~

Mr. Shibley: It is that and other things, Mr. Deans.

Mr. Tatham: Yes. In that ~~case~~ the judgment was 14,000 square feet at \$7.50 a foot.

Mr. Deans: Well, does that relate directly to the \$60,000 that is set aside by Canada Square for the provision of

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PLG

(Mr. Deans)

the same executive offices and board rooms?

Mr. Tatham: Within reason, yes. I have to qualify my answer because if you look at that working piece of paper you will note that I took ~~an~~^{an} editorial licence. ~~And~~ The allowance that had been developed by the fellow within our organization who developed these figures, I did not agree with and I reduced it to \$600,000. The ~~check~~^{check} marks and deletions are mine.

Mr. Deans: I can see certain things. So that I clearly understand, are you saying ~~that~~^{that} the other matters that are on this page ~~Mr.~~^{Mr.} Shibley, I am asking you, ~~the~~^{the} other matters B through H that are on this page are a part of the general contract ~~between~~^{between} Canada Square ~~and~~^{and} Hydro or what?

Mr. Bullbrook: Mr. Shibley isn't ~~the~~ looking at ~~the~~ the same page you are.

Mr. Shibley: I am sorry, I don't think I am looking at the same page.

~~Mr. Chairman: You are looking at the same page.~~

Tape H 1198 follows

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12:55-1:00 pm
V.H.

~~(Mr. Deans)~~

~~between Canada Square and Hyde Park~~

~~Mr. Bullbrook: Mr. Shibley isn't looking at the~~

~~same page you are~~

~~Mr. Bullbrook: Mr. Shibley isn't looking at the~~

Mr. Chairman: You are looking at the Yolles and Rotenberg ~~and~~

Mr. Deans: I am looking at Yolles-Retenberg project budgets a, b, and c, and if you are going to compare - do you have those? Do you have what I am looking at?

Mr. Shibley: Mr. Deans, I think we are about to recess and maybe we might just spend a few minutes together during the recess and pick up after ^{you can} and explain to me what's on your mind.

Mr. Deans: Okay. Fine.

Mr. Shibley: If you agree with that ~~one~~

Mr. Bullbrook: There's one other thing before you do recess. I realize this can be adduced quite easily elsewhere, but I would ^{appreciate} if this witness had the opportunity of giving us some idea of the increased cost on the more sophisticated curtainwall. I know you can get it otherwise because we have a basic formula of a difference I think of \$6.50 and \$12.00 or something like that. ~~But~~ I don't know whether you want to adduce it but eventually we would want to have those figures.

Mr. Shibley: Mr. Bullbrook, Mr. Moog will be giving evidence as to that and he can give us areas, and unless there is a real disparity in the excess cost between he and what this witness has said, I don't think it will be a problem.

Mr. Chairman: Ladies and gentlemen, we are adjourned then till 2:30.

Mr. McCallum: Mr. Chairman, is this the veto on my saying something long enough to speak to the question of the length of time of adjournment. May I say to you that relying on an arrangement that I thought we had made last night, I have made another appointment and I think it will

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V.H.

(Mr. McCallum)

→ be impossible for me to be here until three. I am not for a moment suggesting that my role is anything other than a listener, from 2:30 til three, but I just want you to know that Hydro's counsel will not likely be here from 2:30 until three.

Mr. Shibley: Counsel will get the whole case ~~pass~~

Mr. McCallum: I wouldn't be at all surprised!

Mr. Bullbrook: Are you adjourn^{ing}~~ing~~ until 2.30 then?

Mr. Chairman: Well yes.

Mr. Chairman: I am trying to recall what ... *in fairness*

to Mr. McCallum that we might not have needed to have gone on this afternoon, is that what you are referring to Mr. McCallum?

Mr. McCallum: *That is certainly* ~~that is~~ what I am referring

to. I am referring to the conversation I had with you and Mr. Shibley last night ~~pass~~

Mr. Chairman: Where we thought we might be ~~pass~~

Mr. McCallum: ~~pass~~ upon which I made certain other arrangements.

Mr. Chairman: Where we thought that the evidence we had might not go on until the afternoon?

Mr. McCallum: That's correct, sir.

Mr. Chairman: I know we indicated ^{and} we were hopeful it wouldn't, but I don't know that we had given any undertaking that it would not.

Mr. Shibley: Not at all.

Mr. McCallum: Well I may have done the very thing that I guess I have done at other times in this hearing and misunderstood. I thought the likelihood was excellent that we were not going to be sitting this afternoon, because I thought we were going to likely finish with Mr. Tatham by about 12 o'clock. That certainly is the way we spoke but, however, look I am simply apprising you of the fact ^{that} ~~that~~ if you want to reconvene at 2:30 I shall not be here, so far as I know. I will do my best but I don't think I will be here.

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V.H.

Mr. Deans: Mr. Chairman, can I say a word about that?

~~Mr. Deans:~~ Mr. McCallum's obviously a man of considerable expertise and is required by Hydro and while I would like to proceed as quickly as possible, I think that ~~that~~ ^{that} Mr. McCallum's presence may very well be necessary for Hydro and I would like to suggest that we attempt to accommodate him by not convening until three, ^{and allowing him} ~~the~~ additional time.

Mr. Chairman: I'm quite agreeable to that. I know, Mr. McCallum, that we discussed that we had hoped to be over. I didn't realize that you had taken anything that Mr. Shibley or I had said was an indication that we would be through, particularly in view of our past performance. However, since I would like you to be here too, because I know you have taken some exception to the way we are now proceeding and in view of that exception that you have taken, I think that you should be here, ~~and~~ gentlemen, we will not re-appear until three o'clock.

Mr. Bullbrook: Before you finish, I don't want to unduly hold you up, I have mentioned during the recess to Mr. McCallum, I think we should voice to him and counsel for Canada Square that I want to wholeheartedly agree with the attitude that ^{you} ~~he~~ took previously, ~~and~~ but I think both those counsels should recognize that in connection with this witness that we want to give them the most, the fullest opportunity, through our counsel, to examine this witness. Right?

Mr. Chairman: That's right and it may be, ~~that~~ as I understand it, that we hope to have Mr. McCallum in that position of witness at some time, that he can make a statement on these things at that time.

Mr. Shibley: I think not. I think it goes beyond that. If Mr. McCallum wants to submit to me areas of questioning that he considers have not been covered or need clarification, I would be delighted to review them with Mr. Tatham.

(Mr. Shibley)

~~have covered the ground that I have suggested~~
~~to review them with the witness.~~ I think that is basic to
 the examination of any witness and there is nothing unique
 about Mr. Tatham's testimony in that regard.

I have had the benefit of suggested questioning
 from various counsel when I've dealt with a variety of
 witnesses. Now, then, I'm inclined to agree with Mr. Deans
 that Mr. McCallum should have the opportunity to hear the
 whole of Mr. Tatham's evidence so as to be equipped to
 make his representations.

I would like to think that we will finish with
 this witness today and that is my only concern about the
 more extended recess, but I ask you to bear that in mind,
^Sould it be ^Cecessary to sit through until 6.30, instead
 of 6.00.

Mr. W. Newman: Well, Mr. Chairman, ~~of time~~
~~and~~ I've taken ^{on} commitments tonight too, Could we
 sit until 1.30 right now?

Mr. Chairman: Oh, I think not. I'm thinking of
 other people that are working here. You and I have been
 sitting here and not ^{doing} too much, but the witness has been in
 the box for some time, Mr. Shibley has been questioning him
 and my charming secretary has been working pretty hard too.

I think we will adjourn now until 3.00 o'clock.

The committee recessed at 1:00 o'clock, p.m.

APPEARANCES

Committee members:	J.N. Allan
	J.E. Bullbrook
	I. Deans
	M. Gaunt
	L.C. Henderson
	R.G. Hodgson
	W. Hodgson
	J.P. MacBeth (Chairman)
	W. Newman
	J.A. Renwick
	G.W. Walker
Clerk of the committee:	Paul Moore
Committee counsel:	R.E. Shibley, QC
Assistant to committee counsel:	J.P. Bell
Ontario Hydro counsel:	Pierre Genest, QC
	James McCallum, QC
Canada Square counsel:	Douglas Laidlaw, QC
	Blair Cowper-Smith
Vice-President, Y and R Properties Ltd.:	G.V. Tatham

List of exhibits introduced during this sitting
appears on the next page.

INDEX OF EXHIBITS

Exhibit	Page	Description
184	1172 - 2	File of Y and R properties re new Hydro head office building.

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Wednesday, July 11, 1973

Afternoon session

July 10 /73

3:05 - 3:10 pm

C.B.

~~MINUTES~~ THE ONTARIO LEGISLATURE -SELECT COMMITTEE
HYDRO HEADQUARTERS

The committee resumed at 3.08 p.m.

Mr. Chairman: Ladies and Gentlemen, I ask the committee to come back to order and we'll proceed.

Mr. Walker, I think you wish to raise a question of order.

Mr. Walker: Mr. Chairman, there is a matter that I want to raise, and it has bothered me since ~~MR.~~ Shibley made the remark earlier this morning, ~~and~~ mulled about *it* over the noon hour and I'm convinced that if we pursue a certain line of questioning we may find ourselves in a rather embarrassing situation, and that's the questioning of Mr. Tatham.

Just let me put the record straight from the beginning. I've spoken to ~~MR.~~ Tatham and indicated what I was going to say and I've indicated that to ~~MR.~~ Shibley and to the Chairman.

I feel if we are to take ~~MR.~~ Shibley's remarks earlier this morning that we are dealing almost with an expert, ~~or~~ if I can use that ~~same~~ word, "expert", we are in a way receiving expert testimony, that it could be somewhat damaging, because, ~~MR.~~ Tatham, I've been extremely impressed with your evidence, but I have to really consider the fact that you are one of the developers who was not successful in the bidding and, therefore, by definition must

(Mr. Walker)

be biased, if not awfully close to being biased. Your remarks as an expert certainly would be very valid in the ~~context~~ ^{context} of not having you ~~been~~ here as an unsuccessful developer.

If we need expert testimony in this respect, Mr. Chairman, relative to the lease-purchase arrangement it seems to me it would be more appropriate for us to invite in an expert, rather than rely on one of the person whose evidence must be weighed like all the others. We do have two types of developers before us. ~~In fact, we have three with whom we will have particular discussions, one.~~

H1201 to follow

H-1201-1

(Mr. Walker)

~~development before us~~ In fact we will have three with whom we will have particularly lengthy discussions; one being Mr. Smith, for whom there was vigorous cross-examination, and one now being Mr. Tatham, and ultimately Mr. Moog. My suspicion is the cross-examination on Mr. Moog and on Mr. Smith would be somewhat different than what they would be in the case of Mr. Tatham, whom we are, to some extent, treating as an expert. I think it is incumbent on us, Mr. Chairman, and I do so request, that we direct all our future questions to Mr. Tatham along the line of strictly factual questions as they relate to his submission. I don't think that we should be asking opinion evidence of him. For instance, "Do you think that is a great looking design?" Well he is probably going to think that his design is better. And that is a very natural impression, and to some extent some of those remarks came out this morning - you thought your building was more efficient and so on.

Mr. Bullbrook: Was that question asked?

Mr. Walker: No, not that particular ~~one~~. I'm sorry, I'm using that as an example.

Mr. Shibley: I'd like an example of ~~the~~ question that I asked which wasn't factual.

Mr. Walker: Well, all I am trying, ~~and~~

Mr. Allan: A question, Mr. Chairman, ~~and~~

Mr. Chairman: Let Mr. Walker continue.

Mr. Allan: I thought he had ~~finished~~

Mr. Walker: All I am trying to say, Mr. Chairman, is that

this man represents a firm which bid upon this Hydro project, and ~~his evidence~~ should be treated as such, ~~and his evidence~~, and whether he is right or wrong, ~~the~~ judgements we will make ~~are~~ to be on the basis that ~~he is~~ ^{the name as} any other witness. I do wish us to avoid the principle of expert which, I may ~~say~~, merely ~~created~~ in Mr. Shibley's comments this morning, but has bothered me sufficiently that I felt it incumbent on me to raise a question at this time. We will have, in the area of economic matters, likely an expert in Mr. Anson-Cartwright when he appears. And truly he should be treated as an expert in that case. But any possible suggestion,

H-1201-2

(Mr. Walker)

that we may be here, I think we should avoid. I think to some extent, Mr. Chairman, the fact that there is no significant possibility of cross-examination by other interested parties is a factor weighing upon that question as well.

Mr. Chairman: Thank you, Mr. Walker. Mr. Allan.

Mr. Allan: Mr. Chairman, I am just going to say that I am afraid my thinking is quite different to Mr. Walker's. I didn't think that the witness was being treated at all as an expert, ~~and~~ I paid very little attention to your remark "as an expert." I didn't think you were treating him as an expert witness, but as sort of a side remark that this man was well informed. I gathered that was the only impression.

Mr. Chairman: Are you looking at me?

Mr. Allan: No I wasn't.

Mr. Chairman: You are looking at ~~me~~ Mr. Shibley are you?

Mr. Allan: I am looking at Mr. Tatham.

Mr. Chairman: Oh all right.

Mr. Allan: But I think maybe Mr. Walker is a little over sensitive in this regard.

Mr. Walker: Well I just want to see this come through Mr. Chairman. When we get through we can look back on the evidence and have no concern that there was any conflict of interest that appeared throughout it.

Mr. Bullbrook: I wanted to make just a quick comment. Mr. Walker is quite right that the examination of Mr. Tatham might be less strenuous than the examination of Mr. Smith for reasons that I would suggest are amply apparent ~~to every member of this committee.~~

Mr. Walker: They are very apparent to me, Mr. Bullbrook. I agree entirely with you.

Mr. Bullbrook: I can't for a moment presume to think that the style of cross-examination of Mr. Moog will be. We will have to come to that at the time, but I thought our counsel did, and so did the chairman, make us amply cognizant of the fact that in the acceptance of Mr. Tatham's evidence that it must be in the context

H-1201-3

(Mr. Bullbrook)

of our realization that he represented one of the unsuccessful developers, and I accept it as such. And I want to associate myself with Mr. Allan and his response.

Mr. Deans: I just want to make one comment, Mr. Chairman. I think that Mr. Allan put it in a nutshell. Mr. Tatham's evidence is given not as an expert witness but rather as a person who has knowledge in the field, and is able to give a reasonable analysis without ^{and} ~~he~~ ^{himself} has said on a couple of occasions that he is not qualified to make a judgement on a number of matters that were asked of him. I think that in itself is evidence of the type of witness that he is, and I think that Mr. Allan is absolutely right.

Mr. Gant: Mr. Chairman, I just wanted to associate myself with Mr. Allan. I viewed Mr. Tatham as a witness who ^{against} the background that he spent some 19 years in the operation and management field; ~~his~~ his company has been in the business for over 50 years ^{was} very knowledgeable in these matters,

H-1202-1 follows

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3.15 to 3.20 pm
DT

(Mr. Gaunt)

~~his company has been in the business of...~~
~~...and it was against that background~~
that I was viewing the evidence, and certainly I really didn't
view Mr. Tatham as an expert "witness". I think rather I
tended to look on him as a person who is very knowledgeable,
could supply the committee with some essential detail and who,
at the same time, was one of the people who put forward a
proposal which as it turned out ^{wasn't} ~~was~~ successful. So, you know,
I think that as far as I am concerned we can gain a great deal
of knowledge from Mr. Tatham but at the same time I won't think
he should be considered as an expert witness.

Mr. Walker: Well, I would just like to associate
myself with Mr. Allan on this matter and say that perhaps I am
over-sensitive, Mr. Chairman, but I do hope that in the end when
we can look back, there will be no question of a conflict of interest
that might arise with respect to this particular individual's
testimony. All I am saying is that he is being treated ~~was~~
somewhere ^{re} ~~is~~ in between an average witness and an expert witness
and I am just afraid that it might be a little bit closer to expert
than I would prefer it to be. If we do need an expert, please
bring one in.

Mr. Chairman: Thank you, Mr. Walker, ~~and~~ Mr. Shibley,
any comment on it?

Mr. Shibley: I think it should be understood that I
was examining this witness against the background of his having made
an in-depth ~~analysis~~ ^{analysis} of the specifications and ~~has~~ ^{having} prepared
a proposal submitted to Hydro ~~which~~ referable to this very
project.

The question of his expertise is only significant in
that, in saying what he has to say about the cost of this element,
the effect of a change of specification in this area, the
circumstance of the kind of covenant that Hydro could provide,
the elimination of any leasing risk in terms of the dealing with
~~the~~ Hydro, were all circumstances weighing upon the rate that
he as one developer and the other three developers could and should

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DT

(Mr. Shibley)

have been taking into account in making their proposals.

Now, if we want to go down the line, I was asking him about risk; what was the risk of construction costs referable to this project; ^(what) what was the risk of money lost referable to this project; ^(what) what was the risk of leasing, operating costs, taxes, all directed to this project in accordance with the specifications. ^I asked him to relate his answers to this particular development so that I was not asking the witness for opinion evidence which would fall within the sphere of expert testimony.

I was asking him about the consequences, vis-à-vis this very structure, of these circumstances of the proposal. ^{respect} In ~~view~~ of his evaluations, ~~he~~ I might tell you that I am going to come to what is literally documented evidence of the cost that Y and R computed as ^{at} the time of making their proposal, as for example, that to include 150 foot-tall power added \$1,100,000 to the cost of construction. This is right in the documentation that is part of the exhibit before you, ^{so} ~~he~~ is not ~~giving~~ giving an opinion in that respect, ^{he} ~~he~~ is giving it as a fact that when they computed their proposal, they added in \$1,100,000 for features that were later eliminated from the specification with Canada Square.

Now then, I am a little concerned to sit here silently with the suggestion implicit in Mr. Walker's statement that the witness is ~~is~~ biased. Certainly Mr. Smith and Mr. Tatham and Mr. Zwig and Mr. Moog are all biased in the sense that they were all competing for this project, but I would hate to think, and I am sure Mr. Gordon Walker did not intend that in any manner the evidence of this testimony should be discounted or weighed with less weight than it should be for that circumstance.

I think that the witness has already in the course of his testimony demonstrated that when he has ~~seen circumstances~~ ~~confronting the development that~~

(1203 to follow)

July 11, 1973
3.20-3.25 p.m.
M.F.

H - 1203 - 1

(Mr. Shibley)

~~in the course of the hearing, Mr. Shibley has~~
seen circumstances confronting the developer that adds to the risk, he has been quick to point that out to the committee; and when he has seen elements of cost or other risk that confront the developer on his side, he has been alert to be fair in that respect.

So, as I say, I thought to remain silent in that respect, but I am not going to be. I think the witness, who incidentally has been extremely generous in point of time afforded, certainly to me as counsel to this committee in educating me as to the salient features of this type of endeavour, should not be subject to that imputation.

Now while I have the microphone open to me, there are certain things that counsel for Mr. Moog ~~-----~~

Mr. Walker: Just before you go into that, if you have finished that subject, let me offer my rebuttal in saying that, Mr. Chairman, when I suggest any bias, all I am saying is that this man is a developer and he is only biased in so much as any other developer is biased for his particular development, and the only time that bias would manifest itself - in fact, it may never - would be in the area of opinion~~ing~~ expert~~s~~ evidence on the question of lease-purchase.

That is the only thing that is bothering me, that aspect, but insofar as he gives detailed information about what his submission was, what his proposal was, and things of that nature, there is no question of bias that can even be entertained, and I made that very clear incidentally to Mr. Tatham prior to the opening of this. This in no way impugns his character. If anything, it has to be impugning us for inviting him to make his expert testimony. So if I am critical of anyone, it is us, not him.

Mr. Shibley: All right, that is fine, because I am very

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(Mr. Shibley)

anxious about this witness because I think, if I may say so, Mr. Chairman, he is a witness of truly excellent qualities and I wouldn't want anything emanating from this hearing that in any way derogates from that.

This is something, however, that I have been asked to speak about by Mr. Moog's lawyer during the luncheon recess, ~~and~~ I might say this is something that of course was not known to me previously, but Mr. Moog's lawyer has said that the items of change, such as the change in floor loading and the change in lighting and mechanical, etc., were items respecting which there were offsetting items in terms of benefits moving from Canada Square to Hydro as a matter of subsequent negotiations.

Now I don't know what those offsetting items were but he is anxious that we not reach any conclusions and the press not reach any conclusions until Mr. Moog has had the opportunity to testify as to those offsetting items. I am taking it, therefore, that they recognize that there is some substance in what Mr. Tatham says as to the downward effect on the cost of construction, but on the other side of the coin apparently - and I don't have particulars for the committee - there were concessions made by Canada Square to Hydro which equate, I am presuming, with the value of what Hydro was giving up in these areas.

Now I can't help you beyond that. I think it is fair again to ask the press to be cautious not to jump to conclusions before the evidence of this witness is complete and before the evidence in this whole area is complete. We are now really embarking on what amounts to a new topic and the topic ~~is~~ is was this a provident or improvident transaction from the point of view of Hydro, one of the basic six questions that I put to this committee, and this is the lead witness in that area. There will be many other witnesses yet to come, and I am glad to

Tape H - 1204 follows

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B.A.

H-1204-1

(Mr. Shibley)

~~witness in that area, and there is a very strong possibility~~
~~yet to come, and I am sure we have been alerted to the need~~
to register that caution with members of the committee and
with the press at this time.

Mr. Chairman: Mr. Shibley, I would pick it
up again in regard to Mr. ~~Tatham~~^{Tatham}'s testimony, ~~and~~ I thought that
something had rung a bell with me and I want to read from your
words, Mr. Shibley, at page 1180-2 of this morning's testimony,
~~and~~ and it is about a third of the way ~~down~~ down the page:

"I want you to let me explain, Mr. Bullbrook",
this is Mr. Shibley talking. "I think we are all into an
area of this witness' expertise wherein, unless I stand
corrected, I don't believe any committee member has expertise
to the extent that any member feels that ~~and~~ he needs an
enlargement upon the educational process that this witness
can provide".

Now, I think that is probably ^{what} rang, or waved a
~~red~~ red flag with me ~~just~~.

Mr. Shibley: How about the rest of it.

"The only caveat....."

Mr. Chairman: Yes, I know. You went on and
agreed with what I said later on, ~~and~~ and put in the same
warning that I gave. As a matter of fact, when you used
the word "exper^{it}ise" it came to my mind and then you ~~and~~ went
on to cover it later on yourself, but I think it was in that sense
that perhaps put us on guard and what Mr. Walker has said, and
I am going to associate myself with Mr. Walker, that we must
regard Mr. ~~Tatham~~^{Tatham}'s evidence ~~as that is all~~ Now, I think what
we have all said is fair and correct.

Mr. Bullbrook: I want to record something, not
to keep the thing going but this ~~question~~^{question}, I am sure that we
all agree, each with the other, but let me give you an example

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B.A.

(Mr. Bullbrook)

of what I am talking about. This witness was asked, for example, the questions that affect leaders in connection with evaluation of risk. Okay? With respect to this project. I regard it not only as -- I regard him as an expert in this respect, but giving us the benefit of that expertise, as it relates to the position taken by Y. and R. in developing their proposal, and I think probably we are all of one mind in that respect. Would that be a fair example?

Mr. Shipley: All right. I have been asked to clear up a few other items by counsel representing other interests and I want to do so immediately so that there is no delay in making a matter of record.

First, Mr. Tatnam, there is a document within your file containing a list of information. It starts off, at the top is a name Cec Forsythe and then Ken Candy, something two and a half acres, 12 times 50,000 and so on. Have you got that document in front of you?

Mr. Tatnam: Yes.

Mr. Shipley: Perhaps members of the committee might want to find it as well. It is this document here, it is the third document.

Mr. Deans: From the back?

Mr. Shipley: No. It's the front.

Mr. Tatnam: I'm glad it is a document.

Mr. Shipley: Now, first of all, Mr. Tatnam, who is Cec Forsythe?

Mr. Tatnam: Cec Forsythe is the mortgage manager for the Great West Life Insurance Company, for the Toronto area.

Mr. Shipley: Yes, and is the information which is noted on that document, information elicited from him?

Mr. Tatnam: Well, I am trying to stretch my mind back. As I recall the situation, this was just a pencilled notation to file relative to a phone conversation that I had with Mr. Forsythe

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(Mr. Tatham)

when he indicated to me, at some point in time, this isn't dated but very early on that perhaps the Camp organization had some mild interest in this, perhaps ~~James~~ Pigott did, Mr. Moog had some interest, and he had been advised that one of these groups was quoting on a building that had 50,000 foot of floor area, had 20 stories, had two floors on the ground, cost about \$35.00 a square foot, and so on.

(Tape H-1205 follows)

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3:30-3:35 pm

C.B.

~~(S)~~
~~2 pages - [unclear]~~
Mr. Shibley: Yes, so this ^{yes} ~~is~~ information that was part of a telephone conversation between you and ^{him} ~~him~~ as mortgage manager of Great West Life. Is that correct?

Mr. Tatham: No, this is just information that he had heard relative to this deal, and the Great West Life Insurance Company happens to be a company from whom we had ^{ve} borrowed many millions of dollars for many projects over many years.

Mr. Shibley: Did you discuss the financing of the Hydro project with Great West Life?

Mr. Tatham: Insofar as that is concerned I am not the financial expert in my firm and therefore any discussions I would have had would have been very peripheral discussions. ~~There is a~~ ^{We have a chief financial officer} and we have a president who is uniquely equipped in money matters and they are the people who look after this area.

Mr. Shibley: Now, the point I've been asked to clarify with you is the note on the lower right side of the document. You see the words "twenty-year bonds today not so..."

Mr. Bullbrook: Not 30 years.

Mr. Shibley: "Not 30 years".

Mr. Tatham: I read that to be "not 30 years" and I can't quite honestly tell you what the relationship is. It might have been a comment made by MR. Forsythe.

Mr. Shibley: Now the concern, and I perhaps should identify ^{it} the concern of Mr Moog's counsel is whether, when you gave your earlier testimony ~~as~~ as to making a proposal which was to be firm as to 30 years, you really intended that once an agreement was signed by Hydro you would be committed to the same rental rate for 30 years

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C.B.

(Mr. Shibley)

notwithstanding ^g that within that period of time the cost of money would vary.

Mr. Tatham: NO, we could not make a commitment for 30 years if the cost of money was not available for a period of 30 years. That's not what I said. I said that based on the information that I had, ~~the money~~ the money at that point in time was at 8-3/8 per cent, that 30-year money was available and if it were available we would commit for that period of time. As to the comment, as to it being open for adjustment at the end of 10 years, that would be open for adjustment either up or down related to the cost of money and this would be a calculated risk.

Mr. Shibley: That was a suggestion only.

Mr. Tatham: That was a suggestion. But I would prefer in this area ~~that~~ if you wish to delve into it in greater depth that you get someone from our organization better qualified to answer.

Mr. Shibley: I want to make clear ~~of~~ one part of your evidence, however, and that is, you are saying that if money was available to you for 30 years as at the time of entering into the contract with Hydro, you, of course, would have been quite prepared to commit for a lease of 30 years, which was not subject to variation as to rental rate regardless of the cost of money within the 30 years.

Mr. Tatham: The answer to that is yes.

Mr. ^{R.}G. Hodgson: Mr. Shibley, have we established that this is the note of the witness?

Mr. Shibley: Pardon.

Mr. ^{R.}G. Hodgson: Is ~~this~~ the handwriting in this note of the witness?

Mr. Tatham: Yes, that's my scribble to file.

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3:30-3:35 pm

C.B.

R.
Mr. G. Hodgson: Then I'd like to ask a couple of questions on it. The reference to Candy, is that Mr. Candy of Hydro?

Mr. Tatham: Yes.

R.
Mr. G. Hodgson: And the 15 years possible, is that an understanding that you could finance over 15 years?

R.
Hodgson: ~~He says~~ As I said, all this is, is a scribble to file, related in a phone conversation with an individual putting down some point-form notes, and in casting back a period of two years, I just was resented with this piece of paper, I forgot it existed quite honestly, a few minutes ago, and I had to stop and think what it was all about.

R.
Mr. G. Hodgson: Would it be possible that this is almost a note on the rumours on the street?

Mr. Tatham: Oh Yes, that is what it is. It is a note of the rumours on the street. I thought I made that clear.

R.
Mr. G. Hodgson: I see, I didn't quite understand it then.

Mr. Shibley: And this is really how you first became alert to the circumstances that Under was going to...

Mr. Tatham: I can't even honestly say I had Mr. Shibley. I don't know. It's not dated H1205 to follow

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DT

(Mr. Shibley)

you first became alert to the circumstance that Hydro was going to ~~the~~

Mr. Tatham: I can't really honestly answer that,

Mr. Shibley. I don't know. It is not dated. I don't know what the sequence is. It is a note of the rumours on the street, yes. That's why I was surprised it is now a document. He really took my whole file.

Mr. Shibley: I didn't ~~and~~

Mr. Chairman: You ~~left~~ the doodling ~~about~~ ~~it~~

Mr. Shibley: There is a very interesting diagram in it. Mr. Tatham, there is another item that I have been asked to clear up with you and that is whether in computing your costs ~~the~~ well, perhaps I can leave these -because I am going to come back to your breakout of costs in detail and I am just alerting you in advance that I want to deal with your computed cost of the air conditioning and the number of ~~the~~ elevators in the building you were propounding. I will do that a little later. At the moment I would like to return to the matter of the chronology of your attendances. I take it that, having had Mr. Sissons and Mr. Witbeck and Mr. Candy as guests at the opening of the 11th, you *people would then* ~~the~~

Mr. Tatham: I am sorry, the opening was November 8th and only Mr. Sissons was present.

Mr. Shibley: Oh, I see, all right. I am sorry, ~~the~~ ~~at the 11th you had a meeting~~ with Ontario Hydro. Is that correct?

Mr. Tatham: Yes.

Mr. Shibley: Then your next meeting with Hydro was not until December 14th. Is that correct?

Mr. Tatham: Yes.

Mr. Shibley: Pending that meeting, you had an internal or in-house meeting of your own people, something you called brainstorming session on marketing approach to Ontario Hydro, and there is a document within your file running to some three pages, dated December 9, 1971. It is a short form paper - December 9, 1971, memo to file and it is marked on the top:

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DT

(Mr. Shibley_

"confidential".

Mr. Chairman: Very near the back.Mr. Shibley: It should be near the back of your documents, ~~PROBABLY~~ the second last ~~two~~Mr. Chairman: Two sheets immediately ~~in~~ in front of the last ~~document~~ ~~last~~Mr. Shibley: It is three sheets, Mr. Chairman.Mr. Chairman: Maybe I might not have ^{them} all then .~~Mr. Shibley:~~ I was looking at the wrong one.

I will get the right one then.

Mr. Shibley: Now, Mr. Tatham, can I take it that there was a meeting on the 9th at which there were topical discussions held with seven people in the Y and R organization in an endeavour to work up material for your proposal?Mr. Tatham: It would be a meeting to discuss marketing ~~strat~~ strategy.Mr. Shibley: All right, and would you describe to the members of this committee the process which was involved in that respect?Mr. Tatham: It is confidential.Mr. Shibley: I am sorry, Mr. Tatham, but very little becomes confidential before this committee.Mr. Tatham: Well, basically, it's prudent for a sophisticated organization as I would like to think we are in going after a quantity of business of the order of the size of this development to do an intelligent ~~development~~

(1207 to follow)

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CA

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(Mr. Tatham)

~~...and the view of this deal...~~
~~...analysis of all the factors that one has~~
knowledge of that might have some bearing on the transaction. And this was nothing more than an attempt to put on paper the views of seven people within our organization who might have something to contribute towards assisting in putting the deal together.

Mr. Shibley: And that included Mr. Ken Rotenberg?

Mr. Tatham: Yes.

Mr. Shibley: Who is expert in the financial and ~~and~~ almost all fields of building development. Is that correct?

Mr. Tatham: Yes.

Mr. Shibley: And yourself. Who is Mr. Murchison?

Mr. Tatham: Mr. Murchison is vice-president in charge of our residential division.

Mr. Shibley: Mr. McKinney?

Mr. Tatham: He is our chief financial officer.

~~RECEIVED~~
Mr. Shibley: Mr. Cherkas?

Mr. Tatham: He is ^{SALES} sales manager.

Mr. Shibley: Mr. Parker?

Mr. Tatham: He is the development manager in new development.

Mr. Shibley: Mr. Uiska?

Mr. Tatham: He is an architect who works with Mr. Parker.

Mr. Shibley: All right. Then it starts off;

"Mr. Cherkas made a list of the items which, to our knowledge, will affect the Hydro decision and indicated thereon the Hydro position and how we might offset it. The list is as follows:
1. Timing - Urgent need for immediate commencement"

Now was that a circumstance that had been communicated to you by Hydro?

Mr. Tatham: Yes, in that first meeting we had with them. *u*

Mr. Shibley: And again;

"Hydro position - Will have to rework present concept to cope with changes".

H-1207--2

Mr. Tatham: These are assumptions by the way. We had no in-depth knowledge of ~~the~~

Mr. Shibley: I see. So that you were assuming these things. These were not facts known to you as a result of ~~the~~

Mr. Tatham: Oh, no. We had no more facts than ~~those~~ ^{those} which were minuted based on our first meeting, first and only meeting, with Hydro which occurred on November 11.

Mr. Shibley: Right. Mr. Tatham, while we are dealing with that item, however, ~~we~~ "Will have to rework present concept to cope with changes", had you then seen the plans and specifications ~~for~~ for the original building?

Mr. Tatham: No, but Mr. Uiska of our organization had been one of the ~~architects~~ architects who had worked on it.

Mr. Shibley: He had been previous to joining your firm?

Mr. Tatham: Yes.

Mr. Shibley: So that he ~~had~~

Mr. Tatham: He had some knowledge as a ~~consequence~~ ^{consequence}.

Mr. Shibley: He did have some knowledge, right.

And in connection with those plans - and I am not now relating my question to this particular date of December 9 - can you assist the committee respecting the decision by Hydro to abandon those plans in favour of different plans, without your commenting on Mr. Moog's plans or your own, just directed to the question of whether the original plans should have been abandoned by Hydro? Have you any views on that?

Mr. Tatham: Well, I have some views. I don't know the extent to which they are intelligent views. My understanding is that they were abandoned due to the fact that the building that resulted from those plans was too expensive.

Mr. Shibley: Yes.

Mr. Tatham: And this was the cause for its abandonment.

Mr. Shibley: You have not made an evaluation of the efficiencies of that building?

Mr. Tatham: No, not at all. No.

H-1208-1 follows

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3.45-3.50 p.m.
M.F.

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(Mr. Shibley)

~~admitted to be a lease purchase on the basis that plans~~
~~to do so and you are giving again the~~
reasons, I take it, why you as a developer would similarly
adopt that posture?

Mr. Tatham: Well no, I would adopt an entirely different
posture. If somebody wanted to build it and they had a
specification and it cost more money and we got a markup, I
would build it, but I mean that is looking at it as a business
man but that is not looking at it as a developer.

Mr. Shibley: I see. Well let me ask you then if you
had been asked to do that building on a lease-purchase premise,
would you have been prepared to do so?

Mr. Tatham: Certainly, if we could make money.

Mr. Shibley: It was just a matter of costing then?

Mr. Tatham: Oh certainly.

Mr. Shibley: All right. Then we go on:

"Y and R position have advantage of starting from clean
site, should be no problem in delivering in time frame required".

That, I gather, relates to the existing site owned
by Hydro?

Mr. Tatham: No, that would be the Eaton site.

Mr. Shibley: Is that a clean site?

Mr. Tatham: From our standpoint it was a clean site.

There was only one relatively small building to demolish and you
could start work immediately.

Mr. Shibley: Now in that respect, Mr. Tatham, the
Eaton's redevelopment scheme generally has yet to commence, is
that not so?

Mr. Tatham: Yes.

Mr. Shibley: And can you help the committee as to
whether, if Hydro had accepted your Park Centre proposal,
there would have been a delay even as of this date, respecting

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(Mr. Shibley)

your ability to get under way with their building?

Mr. Tatham: No, insofar as the entire development of the complete project is concerned, the answer to that would be yes, but in reference to the development of this specific building, the answer to that would be no.

We had an understanding with Eatons' and permission from Eatons' to approach Hydro. They had complete knowledge and full knowledge that we were making this proposal, and it was on the understanding that if we were successful in making the development that this Phase 1, as we called it, could proceed immediately because it was on a parcel of land which had no conflict with the existing main store.

Mr. Shibley: So that regardless of ^{what} ~~that~~ else has happened to the Eaton development, this part of the site for the overall development was immediately available as at December, 1971?

Mr. Tatham: Yes.

Mr. Shibley: And you say you had already cleared it with Eatons' to approach Hydro?

Mr. Tatham: Yes.

Mr. Shibley: So they were familiar with your endeavours to have this building be the anchor building that you talked about earlier?

Mr. Tatham: Yes, that was the complete thrust. As a matter of fact the concept proposal that we showed Hydro was a portion of the - we had not developed this proposal to Hydro at the time of, I think it was the December 14th meeting. So the documents we were working from were the documents that we had proposed to Eatons' for the development of their site, and I mentioned before that our whole thrust in conceiving this master-block development was that the ~~actual~~ catalyst for the master-block was a major office building of the order of a million square feet, requiring a starting tenant of the calibre of someone like Hydro.

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M.F.

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Mr. Shibley: And you had already reached agreement with Eatons' that you could approach Hydro with your proposal to build them a head office building with immediate access to the site in December of 1971, for the purpose indicated?

Mr. Tatham : Yes.

Mr. Shibley: Well then let's go on. The second item is existing commitments. The comment is "there may be some on-going understanding with Shore and Moffat that would relate to the old plans" and you didn't know what Hydro's position was. Your position was "if a problem can be offset by taking into consideration in structuring the deal" - can you explain that?

Mr. Tatham: Well in the event that Shore and Moffat by virtue of their prior association and their ~~relationship with Hydro~~
~~is Hydro's~~

Tape H - 1209 follows

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DT

(Mr. Tatham)

~~Shore and Moffat by virtue of their prior negotiation and their~~

in-depth knowledge in Hydro's position had a contribution to make, then ~~that~~ that contribution could be structured within the professional consulting fee arrangement.

Mr. Shibley: Yes. Now the ~~third~~ ^{is} ~~item~~ ^{costs} expended to date, thought to be \$1 million; ^{will} likely ~~be~~ ^{is} ~~wanted~~ ^{can} to capitalize on this ^{investment} ~~is~~ I note your own position ~~can~~ ^{is} ~~be~~ ^{can} overcome in size of the deal, through (a) rental savings ^{that} can be demonstrated, or (b) purchasing present Hydro site and drawings. Now, dealing with (a), I might tell you that it is ^{the} ~~a~~ position, I believe, of Hydro that the savings effected and other reasons justify ^{ied} the forfeiture of that expenditure and I gather that accords with your own position and thinking as at December 9?

Mr. Tatham: Yes.

Mr. Shibley: And if that proved to be otherwise, you were even prepared to consider not only paying for the present Hydro site but to ~~pay Hydro for the site~~ reimburse Hydro the forfeited cost of its drawings for the original building. Is that correct?

Mr. Tatham: Yes.

Mr. Shibley: At this juncture already, Mr. Tatham, do I take it that this was a project that your people were very intensely interested in ~~success~~ succeeding upon?

Mr. Tatham: Yes.

Mr. Shibley: It was, as you say, to be a catalyst that would lead to your continuing involvement in the balance of the Eaton redevelopment?

Mr. Tatham: Yes.

Mr. Shibley: And I gather for that reason you were prepared to benefit Hydro in a very major way in order to reach agreement with them?

Mr. Tatham: Yes.

Mr. Shibley: Even to the extent of reimbursing them the cost of their drawings?

Mr. Tatham: Yes.

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Mr. Shibley: All right, let's go to page two.

Item 4 was an item listed as Mr. Candy and the comment on it ^{that} is "he's the Ontario Hydro in-house architect." "Hydro Position: May be significant factor due to respect held within organization and work done on original concept to date." And your position: "Might be able to offset by deal structuring." Now, what does that mean?

Mr. Tatham: It is a good question.

Mr. Shibley: Mr. Candy didn't realize he was ^{the} subject of an item.

Mr. Tatham: Well, I got to know Mr. Candy a little in the course of these negotiations and it is not uncommon for us to have as a member of the design team a person who can make decisions for the tenant, ~~and~~ I would think that Mr. Candy would make a valuable contribution to a design team.

Mr. Shibley: Yes, ~~as that~~ Just stopping there for a moment, ~~you~~ you say that he would make a valuable contribution to the design team of your firm as a developer. Is that right?

Mr. Tatham: Oh, yes. The developer's input is mandatory, ^A ~~as~~ developer, in our opinion and our 50-odd years history, must have control. ~~Can~~ Otherwise, the costs -- the ^{most} single, significant element of cost is in having control over design.

Mr. Shibley: On the other hand, having someone such as Mr. Candy with familiarity as to the peculiar needs or particular needs of Hydro --

Mr. Tatham: Well, it is mandatory. After all, you are building a building to perform a function.

Mr. Shibley: Yes.

Mr. Tatham: And the function that it is being designed to perform is the function of the occupant, and someone has to have the in-house expertise necessary to interpret that.

Mr. Shibley: Did you at any time, up to the time of submitting your two proposals on the two sites, ever have or receive any contribution of that type from Mr. Candy in the sense of him assisting in suggesting design or commenting upon

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(Mr. Shibley)

the proposals, terms, etc.?

Mr. Tatham: No.

Mr. Shibley: I see. Now, then, going on to item

5, "Make Work." The comment is, "Being a government agency,

(H-1210 to follow)



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C.B.

(Mr. Shibley)

~~_____~~
~~_____~~

~~_____~~ there is pressure to introduce make-work projects. Hydro; pressured to start. Y and R; This should be an advantage to us to getting a start on a much bigger project.'

I take it that in essence everybody wanted to create the project which in turn provided work for a large number of people?

Mr. Tatham: As you know, our industry is used as a whipping boy by governments. It is a stop, go, depreciation, add-on, depreciation take-off; and when they want to make work they encourage it and you know we are pushed around quite a bit. 2

~~_____~~ This is federal.

Mr. Shibley: This is your opportunity Mr. Tatham, go ahead!

Mr. Bullbrook: Could we have a recess now?

Mr. Tatham: I can only assume that in this point in time there was a desire to create employment and therefore a project of this size would supply work for quite a large number of people.

Mr. Shibley: Yes. Just to make it clear that you are not at all biased even politically, I gather your comments are equally applicable to the federal as well as the provincial government? 2

Mr. Tatham: Certainly, more so.

Mr. Chairman: His bias has just come through, Mr. Shibley.

Mr. Bullbrook: I don't regard it as bias at all.

Mr. Shibley: Wait till you see his political contributions.

Mr. Bullbrook: We should have a recess right away.

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Mr. Shibley: I'd like to go on, Mr. Tatham.

The 6th item is, "Existing parking garage," "Present site enjoys a large low-cost, efficient parking facility. Hydro will likely place high value on this." Your position: "Equivalent parking could be provided at higher cost, not considered a problem."

And, "profit." Comment: "Regardless of route followed, profit must result to private enterprise section ^{OR,} i.e. through initial construction or developer route." Hydro position is, "Not known," Y and R; "If political, problem can be offset with option to purchase."

^{explain}
Now would you please ~~explain~~ that entry?

Mr. Tatham: Here I go again. In our profit-oriented society all governments are a share. I mean we already have a partner. If you make a dollar the government takes 50 cents so you are in partnership immediately off the bat. The developer in this sense has a area of expertise which they have ~~been~~ learned through trial and error, and if there was a political problem, at this time we were brainstorming, we didn't know whether it was necessary to sell the development. But the way the deal was structured with Eatons, it was possible to sell the entire development including the land and therefore ~~there could be no~~ ^{was} this ~~problem to~~ ^{could probably} arise, it could be negated by virtue of that approach.

Mr. Shibley: Now I notice that in the last column, ~~however,~~ apparently you concerned yourself that it may raise political questions as to whether Hydro should own its own building at least ultimately, and that this could be offset by providing to Hydro the right to purchase the site itself. Is that correct?

Mr. Tatham: I believe the answer to that is yes.

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Mr. Shibley: And in fact the ultimate proposal was a proposal based upon Hydro becoming the owner of the site at the end of the term of 30 years.

Mr. Tatham: Yes.

Mr. Shibley: Now then, eight "Amenities" are referenced. "Food, shopping." "Would have to install on University," ~~because~~ I gather ~~they~~

Mr. Tatham: NO this is ^{Oh} yes I see, I'm sorry.

~~Mr. Shibley: "I would have to install on University,"~~

~~to~~

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B.A.

(Mr. Shibley)

~~There are several advantages which would have resulted from
this development.~~

~~Mr. Tatham: This is a very good point.~~

Mr. Shibley: And then your position, "Superior due to size of complex and location adjacent to existing facilities". I gather that your comment there refers to the superiority of those amenities in the Park Centre site than they would be ^{at} the Hydro site?

Mr. Tatham: Yes.

Mr. Shibley: "Expansion: It is assumed that Hydro

have made a decision to centralize their offices to gain efficiencies," "Limited growth on two-acre site". Your position, "Excellent to cater to anticipated growth for many years" Now, what was in your minds in that respect?

Mr. Tatham: Well, one of the phenomenal advantages that the Park Centre site enjoyed was not only that you could create a massive, one million square foot efficient building of the type that we conceived, but that this building could be inter-connected and interjoined with other office buildings on that 12-acre site. Therefore, in the event with the passage of time, 20 years or more down the road, Hydro were to grow beyond the million square feet requirement, they could expand into an adjoining building.

Mr. Shibley: Yes.

Mr. Tatham: And we viewed it as a plus.

Mr. Shibley: Whereas I gather you viewed the development on their existing site as limiting their long-term ~~long~~ future growth.

Mr. Tatham: Of course, we are not certain that that would be a factor, but certainly in comparison of the two sites, one is very limited compared to the other.

Mr. Shibley: Then the tenth item is the

"Government Efficiency Programme: The provincial government has announced

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(Mr. Shibley)

the setting up of a task group to ensure maximum efficiency." And Hydro's position - "Would likely view the expenditure to date as being a political overriding factor why they should proceed on present site." Then, Y. and R. position, "Should be able to demonstrate, in a ~~factual~~ factual study, substantial dollar savings as well as other advantages recited above." Now, stopping there, Mr. Tatham, I gather that you recognized ~~that~~ the additional hurdle confronting you ~~as a member~~ in persuading Hydro to locate in Park Centre than to build ~~it~~ on its own site. Is that correct? Item 10.

Mr. Tatham: What I would read into "would likely view the expenditure to date as being a political overriding factor" is the expenditure to date they made on the drawings.

Mr. Shibley: Yes. And because this was a circumstance, and I see also that you are concerned that Hydro's position would be that they should proceed on the present site as a ~~political~~ political consideration, that here again, you were prepared to reach, so to speak, in terms of offering a proposal with, using your ~~s~~ words, "substantial dollar savings as well as other advantages" in order to overcome that additional hurdle.

Mr. ~~T~~ Tatham: Yes.

Mr. Shibley: Because of the importance of this project as the catalyst to your involvement in Eaton Centre.

Mr. Tatham: Yes.

Mr. Shibley: Then, passing to ~~us~~ page 3.

"Ideas generated in the meetings are, summarized in the format. Additional points:

1. Political - Consideration of making use of people well connected to us and to the senior provincial officials. It is felt that the soundness of our proposal should not be ignored."

Would you like to comment on that?

Mr. Tatham: Well, ~~we have~~ had we had any political connections we would use them. We don't have, unfortunately, political connections of any type or substance. I think it is

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(Mr. Tatham)

just straight businessman logic, when you are going after a deal, you use whatever contacts you have in whatever sphere of business. This is nothing necessarily related to just the ~~political~~ Political is ~~political~~ political and political. I don't think it is political within the sense that it is being used and most people think of it in this term here.

Mr Shibley: All right. Now, just so as to clear the air and to complete the record in that respect while I am on this topic, I would like to advise the members of the committee that the political

(Tape H-XX 1212 follows)



M-1212-1

(Mr. Shibley)

~~while I am on this topic. I would like to advise the members of the committee that the political donations of Y and R Properties~~
^{are} as follows.

Mr. Bullbrook: Excuse me for a moment before you do that, and I am very interested in this, and I have no knowledge of the contents of that. I think this is very salient to our information, but do we have any commitment from Canada Square that they are going to make full disclosure as to their political donation^s?

Mr. Shibley: My understanding is that they are going to.

Mr. Bullbrook: ^{And} ^{Canada} they ^{are} going to make their books available to this committee?

Mr. Shibley: If I am wrong in that respect I'd like to be told that now, but I did ask for that information to be compiled and understood that it was being complied.

Mr. Cowper-Smith: Mr. Shibley, I don't think we have made a final decision on that yet. We are not satisfied in our own mind how we expect to approach that issue.

Mr. Shibley: Sometime ago, Mr. Bullbrook, I made a request, I think I made it directly to Mr. Moog, and I think his counsel was present at the time, but in any event, I have made the request that that be produced; and I intend to ask for it when the witness is in that witness box.

Mr. Bullbrook: Fine. Thank you sir.

Mr. Shibley: So whether they have agreed to it or not they may ask this committee for a ruling as to its relevancy and so on.

Mr. Bullbrook: Well, I think now, then, that we had better decide at this time. ~~Mr. Smith~~ perhaps I was negligent at the time Mr. Smith voluntarily gave us this information, now we have Y and R voluntarily giving us the information, ^{And} if we meet resistance with Canada Square, we are then going to be faced with the fact that two of the developers have regarded it as significantly relevant to our deliberations so that they voluntarily gave it to us, Mr. Chairman, ~~and~~ I really think that at the present time we should come to grips with what our posture is going to be if we

H-1212-2

(Mr. Bullbrook)

are resisted by Canada Square. I would like to hear the comments of my colleagues.

Mr. Chairman: Anybody else wish to speak? I am prepared to speak on it, but Mr. Shibley you have...

Mr. Shibley: One of the issues of the sixth is whether any circumstance affected the thinking of Hydro people other than what was in the best interest, and so on. I thought I made it clear in my original comments, referable to that question, that we would necessarily investigate the contributions of each of the four developers making submissions in that context, namely, was there a contribution made such that it might be a piece of evidence, not necessarily conclusive in any sense, but a piece of evidence to be considered by this committee, as to whether it had an effect on anyone in the making of this contract. ~~It~~ It is on that basis that I have advised the committee that it is relevant to ask in this limited way, questions about the financial contributions. I do not intend to ask any of the developers, including Canada Square, what contributions they might have made beyond the relevant period of time. I think I have asked in each instance ~~that~~ that they only go back to 1969 and bring it ^{up} to date from that period, because I view that to be the relevant period. ~~and~~ I do not intend to permit or advise in favour of questioning that is out of the context that I defined already. Now I take it from the comments of Mr. Moog's counsel that notwithstanding my request, and I must say because I hadn't received a negative reaction, I took it that they were going to produce them without an issue to be resolved by ruling of this committee. I intend to ask each of the developers to table with this committee this kind of information.

Mr. Chairman: Thank you, Mr. Shibley. My own comments you might recall, when Ellis-Don made their ² public was the point it is an historical document in the sense that it is the first ^{time} that I know that we have asked for them. ~~And I say~~ When I say "we" I am thinking of this House. ~~I don't know on what basis anybody could refuse that information.~~

H01213-1 follows

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(Mr. Chairman)

~~for them and when I say we I am thinking of this House.~~

I don't know on what basis anybody could refuse that information we asked for, other than a speech I made myself in the House indicating that as you contribute so generally goes your vote but not necessarily in the business world, I suppose, and you get into the realm are we forcing people to disclose how they vote which is I think contrary to some of our basic principles.

However, in this case I don't see how they would have the right to say that that is privileged in any way, and I think it is material, and certainly after asking Ellis-Don and proceeding today, I think we would have to make an issue of it if they did.' However, I am a little alarmed as to your comment 'make the books public'. I don't know whether we want to get into making anybody's financial statements public in the sense of public to the press.

Mr. Bullbrook: I didn't intend that, sir. I meant available to our counsel, I am sorry.

Mr. Chairman: Well in that sense I would agree, I don't think that they have. Now if anybody disagrees with the Chairman's position now is the time to state it before we proceed further here.

Mr. Walker: I quite agree, Mr. Chairman. Perhaps a year ago or two years or 10 years ago, this type of thing may not have been considered as being appropriate, but I think in today's age there is nothing wrong with producing a record of contributions, particularly in this case.

Mr. Chairman: Mr. Allan you look a little worried. I am always concerned about your opinion, particularly when you look worried.

Mr. Allan: I don't look worried.

Mr. Renwick: Mr. Chairman, I don't think this is part of any larger question, I think it is a very simple question that

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(Mr. Renwick)

this is, as we discussed at the original meeting, as Mr. Shibley has pointed out and as you have referred to it, ^{via} a matter relevant to this particular inquiry and there is no other particular connotation about it and I think would have been as relevant 20 years ago as it is today.

Mr. Chairman: Proceed, Mr. Shibley.

Mr. Shibley: Members, I have not reproduced this document so you may want to make some notes.

In 1973, \$1,000 was contributed to the provincial Liberals. There were no other contributions.

In 1972, \$2,000 was contributed to the federal Conservatives.

In 1971, \$1,000 was contributed to the provincial Liberals.

In 1969, there was a total of other donations not identified - these would be for individual candidates in various ridings - totalling \$2,750. Is that correct, Mr. Tatham?

Mr. Tatham: Yes.

Mr. Shibley: ^{Mr.} 1969, \$2,750 was the total of other donations not yet identified, and Mr. Tatham has indicated to me that these were for a particular candidates in various ridings. Is that correct.

Mr. Tatham: Yes.

Mr. Bullbrook: If I can make a comment. The historic success of Y and R is not in any way related to their political acumen.

Mr. Chairman: My comment was going to be they don't do any better than I do at the Woodbine.

Mr. Shibley: They seemed to have guessed wrong every time.

Mr. ^{R.}G. Hodgson: Or hindered either.

Mr. Chairman: They may have picked some winners in the show/place, we don't know that.

Mr. Shibley: I would like to go on, having reached

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(Mr. Shibley)

page three with your memo, item 2:

"Consideration of a value of a deal as a political fact? Consideration should be given to a possibly higher and better use of the existing site for other provincial units and if we were to purchase, an option should be extended to the government to repurchase at our cost".

Would you please explain that to the committee?

Mr. Tatham: Again this was part and parcel of a brainstorming session to develop strategy that might assist in putting a deal together, and it occurred to us that if there was a desire on the part of the provincial government due to the proximity of this ~~site~~ location, that that option should be granted.

Mr. Shibley: I want the committee to understand this clearly, Mr. Tatham. Is ~~not~~ what you are saying that not only were you willing to buy the existing site, but to reserve it, so to speak, under an option to the provincial government that it should have the right to repurchase that site at your cost? Is that correct?

Mr. Tatham: Yes.

Mr. Shibley: As part of an overall transaction whereby Hydro would locate in Park Centre on a site that it ~~would~~ also own after 30 years?

~~Mr. Tatham: Yes.~~

Tape H - 1214 fol lows

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~~Mr. Tatham: Yes.~~

~~Mr. Shibley: And the reason you were thinking in~~
these terms is that again you were anxious, I take it, that there
might be political considerations in terms of government wanting
to preserve this site for its own purposes?

Mr. Tatham: Well, we had no knowledge. We thought
they might be —

Mr. Shibley: Then item 3: "The government centre,
due to the university, cannot move west and will likely continue
to move east as it grows." What is the significance of that
comment?

Mr. Tatham: I can't say that my mind reflects it
back to any other possibility than the fact that Park Centre could
be a well suited location for government offices.

Mr. Shibley: Yes, in other words, government
buildings of the future would have to be east of Queen's Park
as opposed to going west, by reason of the university?

Mr. Tatham: Yes.

Mr. Shibley: And then 4; "Through going the
developer route, this would eliminate the necessity of
encumbering the government with a substantial bond issue."

Mr. Tatham: Well, the government -- I guess it
should be Hydro, —

Mr. Shibley: Yes, and was there something that
triggered your thinking in that respect?

Mr. Tatham: Well, all major institutions have a
limit on their spending capacity, and again I just profess my
ignorance in this area. I am no financial expert.

Mr. Shibley: Mr. Tatham, this document of December
9 outlining a number of items that you were already giving
consideration to, appear to me to be items respecting which your
firm was anticipating continuing negotiations with Hydro. Is
that correct?

Mr. Tatham: Well, had we been successful in



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(Mr. Tatham)

reaching the stage of negotiation, yes.

MR. Shibley: That's my point. These were all items regarding which you wanted input by your own ~~the~~ people in anticipation of continuing discussion with Hydro?

Mr. Tatham: Yes.

Mr. Shibley: In fact you never were given the opportunity to carry on such negotiations with Hydro. Is that right?

Mr. Tatham: That's right, yes.

Mr. Shibley: There was never any discussion with them respecting your willingness to pay for the cost of the forfeited ~~the~~ drawings?

Mr. Tatham: No.

Mr. Shibley: There was never any discussion with them of your willingness to purchase their present site and go the step further of affording an option to the provincial government to re-purchase it at your cost?

Mr. Tatham: No.

Mr. Shibley: That was never any part of any discussion with them?

Mr. Tatham: No.

Mr. Shibley: In fact, from the time you ~~at~~ ultimately submitted your proposals, was there the kind of follow-through that you anticipated?

Mr. Tatham: That's a very difficult question to answer, Mr. ~~Shibley~~ Shibley I have been a party to putting many deals together over the

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C.B.

(Mr. Tatham)

~~_____~~
~~_____~~
years. Each deal has its own idiosyncrasies.

If your proposal is well received and you have an opportunity to negotiate, you are in a position to open up these other avenues. The nature of this understanding was such that you could never really come to grips with it. I would say that we tried to develop the opportunity and tried to indicate a willingness to negotiate. But the opportunity was not afforded us.

Mr. Shibley: Then I take it that the document that we've now reviewed is a reflection of the extent to which your people were prepared to go, should Hydro have seen fit to undertake that kind of negotiation with you.

Mr. Tatham: Yes.

Mr. Shibley: You say you were never provided with the opportunity. Just stepping back for a moment, what view did you take of what was intended by the original submissions made to Hydro?

Mr. Tatham: I'm sort of repeating myself.

Mr. Shibley: Let me go back for a moment.

I gather the specifications that were laid down in point of time prior to your proposal on Park Centre were verbal?

Mr. Tatham: Everything we had in the way of specifications were verbal. We got a very broad initial outline ~~that~~ at the first meeting on November 11. Subsequently I got some further verbal direction when I took Mr. Candy on a personal tour of the IBM computing centre building, ~~That~~ that was on January 11. We had nothing in writing relative to Hydro's requirements until long after our proposal was

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C.B.

(Mr. Tatham)

submitted and that was on April 7, 1972.

Mr. Shibley: Now with that background, what view did you take of the purpose of the original submission that you made as for both sites?

Mr. Tatham: The purpose?

Mr. Shibley: Yes.

Mr. Tatham: Am I talking from foresight or hindsight.

Mr. Shibley: At that time what was your understanding as to the extent of the purpose of the submission.

Mr. Tatham: We thought Hydro was genuinely interested in getting a competitive proposal. It costs a great deal of money to make proposals of this type. You don't go - there is a great deal of work by a lot of very expert people. We retain consultants to assist our ^{on}_A in-house expertise, and we like to think that when consideration was given by Hydro as to whether we should or should not make a proposal, and we were encouraged to make a proposal, that it would be considered.

Mr. Shibley: I notice that when you had your meeting of December 14 with Mr. Gathercole, Mr. Sissons and Mr. Candy, that related to a presentation of the Park Centre concept. Is that correct?

Mr. Tatham: Yes.

Mr. Shibley: Then you had a series of design meetings during the period December, 1971 to January, 1972.

H 1216 to follow



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B.A.

H-1216-1

(Mr. Shibley)

~~You had a meeting with Mr. Candy on January 11, 1972.~~
~~You had meetings with cost estimators and~~
with consultants to prepare your submission. Is that correct?

Mr. Tatham: Yes.

Mr. Shibley: Then, on January 11th, 1972, you
toured the IBM building with Mr. Candy. Is that right?

Mr. Tatham: Yes.

Mr. Shibley: And it was at that time that you
were presented with additional detail ~~work~~ respecting Hydro's
requirements by Mr. Candy. Is that correct?

Mr. Tatham: Yes.

Mr. Shibley: Did you receive any further input
in that respect?

Mr. Tatham: Well, there was a ~~phone~~^{ne} conversation
from Mr. Candy's secretary at about this same time, I have a
memo to file that relates thereto.

Mr. Shibley: His secretary called you with what
information?

Mr. Tatham: With some further specific information
relative to the custom requirements that were involved.

Mr. Shibley: All right. And when you submitted^d
your proposal on the Baton site on January 20, 1972?

Mr. Tatham: Yes.

Mr. Shibley: And a further proposal on the University
site on February 7 of the same year.

Mr. Tatham: Yes.

g Mr. Shibley: I might tell you they are both in
exhibit, Mr. Tatham. Did you have a meeting subsequent to the
submission of ~~the~~^{your} two proposals that I have just mentioned?

Mr. Tatham: The only meeting we had was a meeting
with Mr. Candy and another person whose name I do not have,
Mr. Uiska and myself in Mr. Candy's office ~~and~~^{and} it was at that time

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(Mr. Tatham)

that we received typewritten data relative to the Hydro requirements. The date on that was February 9, 1972. The date we received it was April 7th.

Mr. Shibley: So ~~how~~ that your firm did not receive the written specifications dated February 9, 1972, until April 7th of that year.

Mr. Tatham: That's right, yes.

Mr. Walker: Before you leave that, Mr. Tatham, were the written specifications in any way at variance to the verbal specifications that you have previously received?

Mr. Tatham: Not significantly. There was an element amounting to a few thousand dollars that was applicable to a tunnel that - I think it was about a - don't hang me - about a \$200,000 item, or so.

Mr. Allan: \$250,000 I think you allowed.

Mr. Tatham: Right, that was not in our original contemplation at the time of the submission ^{is} ~~at~~ the Hydro site.

Mr. Shibley: Thank you.

Mr. Tatham: But that was the only significant dollar element.


Mr. Shibley: Yes, I think there is a document, Mr. ~~Walker~~, dated April 10, 1972. It is among the last file exhibit. "You will find attached copy of information supplied to Uiska and myself at our meeting with Ken ~~Sandy~~ April 7. A quick perusal of the document during the meeting ~~indicated~~ indicated that virtually all points were covered with the exception of an allowance of \$250,000 which is required for the underground walking tunnel connecting to the engineering building. This roughly equates to two cents per square foot and I indicated that this would not keep us apart. Would you review the information and advise me of any other point or points" - that's ^{the way} ~~what~~ it reads - as "other than the above that were not covered." That is the information on that.

Mr. Tatham: Yes, that is just an in-house memo.

Mr. Shibley: Yes. Then, Mr. Tatham, I want to go to the document dated January 12th. It is styled, "Minutes". Meeting held at 9.00 a.m. on January 12th re Project "X". I will just take a few minutes to make sure that all our members have the material collated on this.

Mr. Tatham, just looking at the ~~minutes of the meeting~~ minutes of the meeting held among your own people on January 12,

(Tape H-1217 follows)



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CA

H-1217-1

(Mr. Shibley)

I see among those present, Mulvey Engineering Limited; Tamblyn, Mitchell and Partners. Would you tell the committee what connection they have with this project?

Mr. Tatham: We have, for many years and many projects, used a consulting design group that by and large has been fairly constant. The architectural firm we virtually always use is the Webb, Zerafa, Menkes organization; structural is M.S. Yolles; electrical, Mulvey Engineering; and mechanical, Tamblyn, Mitchell and Partners. This team has put together quite a number of major office buildings in conjunction with ourselves and they are accustomed to working together.

Mr. Shibley: I believe Tamblyn, Mitchell and Partners are working on the Hydro building with Canada Square?

Mr. Tatham: Yes.

Mr. Bullbrook: Excuse me. Can you recall whether they were also consulted by Ellis-Don?

Mr. Shibley: I believe they were. ~~that~~ They must be quite a firm. They were involved with three of the,

Mr. Walker: Weren't they connected with the original Hydro plans?

Mr. Bullbrook: Yes.

Mr. Shibley: I think they were also. They have an excellent reputation and I don't think it is any accident that everybody considers they were the firm to use. So that you were working in conjunction with them also. And their sphere of involvement would be mechanical-electrical, would it not?

Mr. Tatham: No, mechanical. Electrical is Mulvey Engineering

Mr. Shibley: I see. Do you know whether Mulvey has got the engineering work on the electrical side for Canada Square?

Mr. Tatham: No, I can't answer that. I don't know.

Mr. Shibley: All right.

In any event, Tamblyn, Mitchell and Partners would be responsible then for the air-conditioning? Is that right?

Mr. Tatham: Yes.

Mr. Shibley: What else?

Mr. Tatham: Plumbing, heating and ~~air~~-conditioning.

H-1217-2

Mr. Shibley: Now then, just dealing generally with the cost of constructing a building, Mr. Tatham; you start with the shell proper ~~from~~ What we might call the poured concrete portion. Can you assist the committee as to the approach your firm took referable to those costs for Hydro's building?

Mr. Tatham: Well, the structural design of a building is a significant element of cost, and subject to the way the building is designed, determines in large measure what ~~was~~ those costs are.

Mr. Shibley: Yes.

Mr. Tatham: For example, the floor loading is a requirement. The column spacing had some flexibility, and the height of the building, which relates to wind stress, all of these factors contribute to the design criteria.

Mr. Shibley: Yes. And referable to a building which I believe wound up being 19 floors, and with these floor areas, have you any comment to ~~make~~ as to the cost of the concrete portion, the basic structure? Would it be high, low or average?

Mr. Tatham: Relative to what? It was a very efficient cost in the specific building that we had conceived.

Mr. Shibley: It was a very efficient cost?

Mr. Tatham: It was an efficient... Well, if you are comparing it to Commerce Court, it was low.

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M.F.

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~~Mr. Shibley: It was a very efficient test.~~

~~Mr. Gaunt: It was an efficient test if you are~~

~~comparing it to the Commerce Court building.~~ if you are comparing it to a 20-foot-bay building; we had conceived a 30-foot-bay building, it would be higher than that.

Mr. Shibley: And what would add to those costs would be the loading elements that we have already discussed, is that correct?

Mr. Tatham : Yes.

Mr. Gaunt: Mr. Shibley, excuse me, I am wondering if it could be expressed in terms of so many dollars per square foot?

Mr. Shibley: We are going to get to that a little later. I think he has already given us a factor for it but there is a breakout in the document called project X, budgets A, B and C, as we will see later on, but let's stay with the minutes, Mr. Gaunt, if you would, thank you.

Mr. Gaunt: I am sorry.

Mr. Shibley: Then item 7 for 6 watt light load the HVAC cost will now have to be budgeted at \$4.00 per square foot. I have been asked to ask you about whether you were going on the basis of \$4.00 per square foot as the cost of air conditioning this building and ask you in particular if you can assist us in that respect?

Mr. Tatham: The answer to that is yes.

Mr. Shibley: It was \$4.00? And was that based on computations made by Tamblyn-Mitchell?

Mr. Tatham : Now that is based on that January 12th minute.

Mr. Shibley: Yes, and they would make that contribution in terms of their estimate of the cost of the air conditioning system?

Mr. Tatham: Yes.

Mr. Shibley: And the air conditioning system - I won't go into it in detail - is as described in a document they

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(Mr. Shibley)

submitted to you, which describes the HVAC method of moving air through a building?

Mr. Tatham : Yes, and it relates to the specification that we made in our proposal.

Mr. Shibley: Then carrying on, I note you say the electrical extra for 150 foot-candles at 6 watts - I am looking at item 8 - will probably be 50 cents a square foot, so that you are translating the cost of that extra ~~extra~~ candlepower into rental rate of 50 cents per square foot?

Mr. Tatham: No, that would be 50 cents a square foot of ~~building~~ ^{building} above grade, and that is where you get your \$550,000 premium from.

Mr. Shibley: I see. All right. So then if we may go on to what I see is styled Project X ~~particular~~

Mr. Allan: Mr. Chairman, before you leave that, item number 1 there, the consultants have now received both sets of drawings.

Mr. Shibley: Yes, thank you, Mr. Allan.

Mr. Allan: What drawings are they ~~particular~~

Mr. Tatham: These are our drawings for the project that was conceived.

Mr. Allan: Yes. You got no drawings from Hydro?

Mr. Tatham: Oh no, no.

Mr. Shibley: I want to go to the breakout of costs, it is styled Project X, budgets A, B and C, and it starts off using Parkway Place Phase 2 standard, above grade, 1,665,000 square feet. Is everybody with me as to the document? It is the very next document forward from the last one we dealt with.

Mr. Walker: Project X - 1?

Mr. Shibley: Project X, budgets A, B and C. No not X -1.

Now the first portion on original site, it sets out various



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(Mr. Shibley)

square footage of structure above and below grade with a total gross of 1,100,000 and then you start off Cost A, and you break out the cost - ~~the~~ total A, \$19.50 net. What ^{does} ~~is~~ that figure represent?

Mr. Tatham: That relates back to a rented foot.

~~Mr. Shibley: Is that the same as the cost of~~

~~constructing a building~~

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(Mr. Tatham)

~~11-11-73~~

Mr. Shibley: So that you are saying that the cost of constructing a rentable foot of space on this set of calculations was \$19.50?

Mr. Tatham: Yes.

Mr. Shibley: Now, just before we go on, were these figures ~~was~~ computed on the basis of information provided by the group of people, or group of firms, represented in the minute of January 12th, namely, Yolles Associates Ltd.? Why would they be involved?

Mr. Tatham: Well, they are our structural consultants.

Mr. Shibley: Yes, Mulvey Engineering, you have said are electrical --

Mr. Tatham: Right.

Mr. Shibley: Tambllyn, Mitchell are ~~mechanical~~ mechanical --

Mr. Tatham: Right

Mr. Shibley: And Y and R is the developer.

Mr. Tatham: Right, but the architect is missing.

I don't why he wasn't at that particular meeting. He has been at others.

Mr. Shibley: I will come back on these figures in a moment but then you have got "Costs ^{b/} ~~15~~". If ~~and~~ 150 lb. per square foot loading is required, add \$200,000 for a total cost of \$19.70 per net rentable space." Is that correct?

Mr. Tatham: Yes.

Mr. Shibley: This would not be for gross space?

Mr. Tatham: No, that's a premium of 20 cents a rented foot.

Mr. Shibley: All right, just to make that clear to the committee, if these figures were taken off on a gross-square-foot basis, would the figure be lower?

Mr. Tatham: Yes.

Mr. Shibley: So that in terms of cost of constructing on basis (a), it would be even lower than \$19.50 if computed on a

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(Mr. Shibley)
area
gross ~~area~~?

Mr. Tatham: Yes.

Mr. Shibley: ~~And~~ And similarly with the next figure?

Mr. Bullbrook: Do I take it that we compute on the

basis of the net rentable area because we have to relate this capital cost to our ~~income~~ income, coming back ~~the~~ ^{through} the rent, is that it?

Mr. Tatham: Well, it is a very convenient way of thinking. ~~It's a~~ ^{It's a} way that I like to think.

Shibley: Then, ^(c) Cost ^(c). If 150 foot-candle

light ~~is~~ is required, add electrical \$550,000, mechanical \$550,000, \$1,100,000. That's the same as the figures you have ^(d) given previously, is it Mr. Tatham?

Mr. Tatham: Yes.

Mr. ~~Shibley~~ Shibley: And on that footing you are up to a rental -- I am sorry, a cost of construction of \$20.80 ~~per~~ for net ~~rentable~~ rentable space.

Mr. Tatham: Yes.

Mr. Shibley: Then --

Mr. Bullbrook: May I ask a ~~question~~ question again, I am sorry. Why the conjecture in ^(b) ~~the~~ and ^(c) ~~the~~ When I was under the impression that Hydro had said it had to be 150 lb. and 150 foot-candle light?

Mr. Tatham: Well, we had just finished building two buildings and therefore our costs were known costs. Therefore we started with knowns and built them up with the premiums and we had a double-check. You must appreciate we have a complete construction company and within that construction company we have estimators, and we use our in-house expertise to double-check the information we get from our consultants, so that the figures interlock so that you are not working with one set of information only.

Mr. Shibley: Just to make your answer clear, I take it then that your approach is ~~your~~ ^{your} current experience in terms of cost works out to this amount and then you add to that basic cost

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(MR. Shibley)

any extraordinary costs resulting from extraordinary items stipulated for by the lessee?

Mr. Tatham: Yes, that's the approach we took in this particular illustration.

Mr. Shibley: And you were drawing, you say, upon the experience you had had in late 1971, I guess, as to the computation of the cost breakdown.

Mr. Tatham: Yes, we had just finished completing in gross square footage about 600,000 square feet of building, very similar in form, and therefore our costs were current and known.

~~Mr. Shibley: [unclear]~~

(H-1220 to follow)

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C.B.

~~the buildings very close together and the cost of~~

~~costs were therefore very high.~~

Mr. Shibley: Those costs, Mr. Tatham, are you telling us that they were lower than \$20 per net rentable square foot?

Mr. Tatham: Of the two buildings of which I speak?

Mr. Shibley: Yes.

Mr. Tatham: I think the answer to that is no.

Mr. Shibley: All right.

Mr. Tatham: Because, again you have to look at each building unto itself.

Mr. Cowper-Smith: Mr. Shibley would Mr. Tatham be referring to the IBM computing centre?

Mr. Shibley: I was going to ask him what buildings he's talking about. What buildings - you said the two buildings. *by the first built*

Mr. Tatham: Well the two buildings that we have built most recently, at this point in time, was the IBM computing centre and Allstate head office building.

Mr. Deans: Mr. Shibley....

Mr. Shibley: Yes certainly.

Mr. Deans: In the calculation of all of the costs under schedule A, does that include the entire building? Like when you calculate structural at 53, does that include the whole building including commercial space and...

Mr. Tatham: The answer to that is, I believe, yes. In other words normally our estimator breaks out the area below grade and divorces it from the area above grade.

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C.B.

Mr. Deans: Can I ask you a question again then. Why would ^{if} that includes all space, why would you divide the total of all of the costs by a million to come to square footage when the million is only the rentable space attributable to Hydro?

Mr. Tatham: You must appreciate that I'm at a bit of a disadvantage. I'm following MR. Shibley's direction, we are pulling pieces of paper from here, there, and everywhere.

Mr. Deans: Could you go through that page for me to clear it up for me so I'll understand it?

Mr. Tatham: Going from notes from my file here, I've got, base building excluding garage, I'm referring to another working paper here.

Mr. Deans: You have something else, I'm sorry.

Mr. Tatham: And it says \$19,500,000. So that figure of 19,500,000 excludes the garage.

Mr. Deans: Excludes the garage.

Mr. Tatham: ^(Excludes) The garage, therefore it is only the area above ground. All right.

Mr. Deans: Okay.

Mr. Tatham: Therefore this building was designed with a unit of rented area extremely close to 1 million ^{square} ~~square~~ feet. Therefore it is just a matter of dividing the ^{million} \$19.5 ^{by} a million which comes up to the unit per rented foot. Does that give you the information you want Mr. Deans?

Mr. Deans: ^(Unit in foot) The \$19.5 then is not the total cost of the building.

Mr. Tatham: No, it is not.

Mr. Deans: And that there should be an additional sum, perhaps...

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C.B.

Mr. Tatham: It is \$24,550,000, the total cost of the building.

Mr. Shibley: There are further items to come..

Mr. Deans: Yes, I saw the next page.

Mr. Shibley: But I think what the ~~the~~ witness has done, you see he starts off with the above ~~figure~~ ^{square feet,} grade 1,065,000, ^{below grade} 50,000 square feet, total grass. But then in terms of cost of construction he gives a cost per net rentable space, for the obvious reason he's ultimately going to have to work to a rental rate which in its turn has to relate to rentable space. Am I not correct, Mr. Tatham, on that?

Mr. Tatham: Yes.

Mr. Deans: Mr. Shibley, the reason I asked the question is this. Is that the way, to your knowledge, is that the way developers make their ~~value~~ calculation?

Mr. Tatham: There are many approaches that developers take towards developing costs. When you are in a conceptual stage of ^a building, before the building has reached the point of finite design where you ~~can~~ can do a detailed take-off with units applicable to every aspect, this is the most intelligent way of approaching a cost estimating basis. In my working, as I said, I'm disadvantaged because these papers just keep floating around and somebody picks up one and says, "What's this all about"; and I'm sorry to say that my train of thought *holds that...* On the building that we had conceived on the Eaton's site the base building, excluding the garage, was ~~was~~ \$19.5 million; now I'm going from a working paper here, I don't know whether *it has been introduced*

Mr. Shibley: No go ahead Mr. Tatham give the precise material *from the working paper*

Mr. Tatham: We added a premium for the 150 pound floor loading of \$200,000. We added a premium, electrical and mechanical, for the 150 foot candle lighting of \$1,100,000.

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C.B.

(Mr. Tatham)

We ~~we~~ added an allowance for custom requirements of \$600,000. We added a parking garage for 1,000 cars of \$2,560,000.

Mr. Deans: *That doesn't show in our*
~~Cost breakdown and construction~~

of those statements.

Mr. Tatham: As again I don't know what portion of the file has been reproduced. We added other basement services of \$350,000. We added landscaping of \$275,000, and we came up with a construction ^{cost} of \$24,550,000.

~~Mr. Deans: I think we have it.~~

~~Mr. Shibley: I think we have it.~~

~~Mr. Deans: I think we have it.~~

~~Okay, C.B.~~

~~Mr. Shibley: I think we have it.~~

1221 to follow

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~~XXXXXXXXXX~~

Mr. Deans: We don't have all those figures anyway, do we?

Mr. Shibley: I think you may well have it.

Mr. Deans: Not in these three ~~figures~~ ^{station cuts?}

Mr. Shibley: No.

Mr. Deans: Okay, fine.

Mr. Shibley: I think what the witness is saying is that it is there, but I have scrambled them on him. I am sorry to have done so, but I was trying to zero in on this aspect of the evidence first. He is looking at his working paper which is marked page 2. My approach had been, Mr. Deans, ^{that} I had intended just to go through this part, then get him to supplement in a summary way the other costs that were built in, and avoid the need to go through these working documents seriatim, ~~and~~ ^{if} I might just go through it, if you are still in doubt when I am through we can come back to it.

Mr. Allan: We are talking about the building on the ~~XXXXXXXXXX~~ Park Centre ^{aren't we?}

Mr. Shibley: That is right. I gather just to clear that up, however, Mr. Tatham

Mr. Tatham: I am sorry for interrupting, Mr. Shibley, but the XI was ~~a~~ ^{is} similar building on the Hydro site, and the difference, the reason the money is less is that there was not a requirement for this very large parking garage, because the parking garage already exists, therefore the price of \$22,840,000 on the Hydro ~~the~~ site.

Mr. Shibley: Now then, if we may go on with page 2 of the document titled "Budgets A, B and C", Mr. Tatham; the custom requirements that you say were another add-on are indicated as (a) through to (h) on that page. Is that correct?

Mr. Tatham: Yes.

Mr. Shibley: Called "Costs 'D'".

Mr. Tatham: Yes.

Mr. Shibley: And here is where you break out ~~the~~ ^{is} actually the total \$590,000 worth of custom requirements, is that correct?

H-1221-2

Mr. Tatham: Yes. Which I rounded to \$600,000.

Mr. Shibley: \$600,000. And then there is an item, ~~sub~~ paragraph (a), ~~the~~ the executive office - \$100,000. That is the same figure you were mentioning earlier?

Mr. Tatham: Yes. This is a working paper that was developed by one of the individuals within our organization as being his guess of what dollars might be involved.

Mr. Shibley: All right. Now then, Mr. Tatham, I see also items in both "Costs 'A'" for elevators and escalators, and an item here for a private elevator. I have been asked to ask you what number of elevators were included in the building that you were contemplating as a base ^{for} for the submission?

Mr. Tatham: Well, if you refer to the project X sheet you will see "vertical transportation - eight elevators, seven escalators," seven times two escalators - that is up-down escalators - fourteen, plus a freight.

Mr. Shibley: Yes.

Mr. Tatham: In other words the vertical transportation that was envisioned as perhaps - and this is all a matter of study -

Mr. Shibley: Yes.

Mr. Tatham: The dollars are there.

Mr. Shibley: Right.

Mr. Tatham: There is \$1½ million, and vertical transportation can often best be achieved by escalators when you want to move masses of people to a place - if everyone is the same starting and leaving time.

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B.A.

(Mr. Tatham)

~~When~~ when you want to move masses of people in a hurry, if everyone has the same starting and leaving time, ~~and~~ ^{and} this was an assumption that this might be ⁵ preferred solution to elevating in the lower portions of the building.

Mr. Shibley: All right. Now, then, going on, I see on the other hand there is a private elevator. Is that in addition to the elevators?

Mr. Tatham: Yes.

Mr. Shibley: All right. Then, no charge for accommodating 12 cars. Main floor meeting room with stage capacity for 300 people. This would be an auditorium, and there is a break out of those costs as well. Is that correct?

Mr. Tatham: Yes, well, this is completely arbitrary because we had no detail.

Mr. Shibley: Then, in addition to the costs break out on those two pages, were there additional costs that were involved in the overall costs of the project? I am now thinking of the basement area. I know you have referenced it already.

Mr. Tatham: Well, again, I don't feel familiar with these individual pieces of paper as they are floating around here, but.....

Mr. Shibley: Without referring to documents, would you give us what supplementary costs - I'm looking at a document.....

Mr. Tatham: Well, here -- I'm looking at a worksheet and I am thinking now in terms of the building on the Eaton site.

Mr. Shibley: Right.

Mr. Tatham: And I am presuming what you are asking is what costs were there other than the bare bones construction cost? ~~and~~ I have got demolition \$200,000, professional fees - \$1,450,000, legal - \$100,000, project management - \$150,000,

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(Mr. Tatham)

contingency - \$500,000, development management - \$150,000,
interim financing - \$2,400,000, sewer impost - \$260,000,
tax burden - ~~about~~ \$250,000. Total development costs -
\$5,460,000.

Mr. Shibley: All right. So that that amount
would necessarily be ~~added~~ added to the 20-odd million dollars
that ~~was the~~ ^{was the} cost of.....

Mr. Tatham: Yes, \$24,500,000 and ~~the~~ \$5,400,000 --
I have a total figure here, including a land cost of \$4 million,
of \$34,010,000.

Mr. Shibley: YEs. Now, ~~we~~ just dealing with that
for the moment, the \$4 million land cost is the value you placed
on the site that would be employed to develop the building in
Park Centre.

Mr. Tatham: Yes.

Mr. Shibley: So that, exclusive of the land, the
cost of construction of the building, all in, was approximately
\$30 million.

Mr. Tatham: Yes. That is for a million square
foot ~~approximately~~ rentable.

Mr. Shibley: Yes. For one million rentable square
feet.

Mr. Allan: And that includes the garage.

Mr. Tatham: That includes the garage.

Mr. Shibley: It includes everything, Mr. Allan.

Mr. Tatham: That is on the Eaton site.

Mr. Shibley: Yes. Then, with respect to the
document, styled "X, 1" you have said that you were then required
to transpose, so to speak, your thinking to the development
of a building on the Hydro site, is that correct?

Mr. Tatham: Yes.

Mr. Shibley: In that respect, ~~was~~ what variations
were involved in the costing of the structure?

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B.A.

Mr. Tatham: Well, the prime variation was the deletion of the garage. This did not receive the depth of (and effort study and analyses) that was put into the Eaton site. It was a matter, simply, of transposing^s the concept to the other site and eliminating the garage ~~area~~ portion.

Mr. Shibley: Yes, and then in addition to the \$22,840,000 on that sheet you would nevertheless have to add to that the development costs of ~~the~~ \$5,460,000. Is ~~that~~ that correct?

Mr. Tatham: I believe the answer to that is yes; very ~~close~~ close to that.

Mr. Shibley: And the cost, then, of the building, and I am talking about a rentable one million square feet on the Hydro site, was in the overall, what amount?

Mr. Tatham: Oh, you are looking at something in the order of

(Tape H-1223 follows)

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H - 1223 - 1

~~Mr. Tatham~~ Mr. Tatham

~~on the Hydro site was in the order of \$29 million, I believe.~~

~~Mr. Tatham: Yes, I am assuming that the cost of construction is about \$29 million, I believe.~~

\$29 million, I believe.

Mr. Shibley: ~~Now~~ limiting yourself to the question of cost of construction, which is not inclusive of interim financing, and not inclusive of design, and talking about the cost of the building on the Hydro site, and speaking in terms of a building ^{providing} in the order of ~~one~~ million rentable square feet of office space, and incorporating whatever measure you had of commercial development, did you incorporate any commercial premises in this?

Mr. Tatham: Not in this analysis, we worked on ~~the~~ premise, and we took the whole thing as being rented out at one rate.

Mr. Shibley: Now taking one million rentable square feet on the Hydro site, and eliminating those two elements of cost, the cost of design and cost of interim financing, what did you calculate to be the cost of construction of ~~this~~ building per square foot?

Mr. Tatham: Well, it is \$22,840,000 and again, ~~you know~~ whether you are talking about a gross square foot or a rented square foot. On a rented square foot basis it is of the order of about \$23 a rented square foot construction cost.

Mr. Shibley: And on a gross square foot basis?

Mr. Tatham: I don't have that figure. I might have it somewhere around here. I would have to develop that for you.

Mr. Shibley: It would be something less than \$23.00?

Mr. Tatham: Yes.

Mr. Shibley: And would this be a building built to the specifications laid down by Hydro as you ultimately received them in writing in April of 1972?

Mr. Tatham: Yes, including an allowance of \$600,000 for the custom requirements.

Mr. Shibley: And including the additional costs of the point-loading factor and the lighting factor that you have already

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(Mr. Shibley)

reviewed?

Mr. Tatham: Yes.

Mr. Shibley: Those three items totalling some \$1,900,000?

Mr. Tatham: \$1,300,000 is the figure I have here.

Mr. Shibley: Oh \$1,300,000 plus the \$600⁰⁰⁰?

Mr. Tatham: Yes.

Mr. Shibley: Now still on the matter of meeting Hydro specifications, Mr. Tatham, in the course of building a building on this basis, namely, lessor-lessee development company doing the planning as you go along, etc., on that type of transaction are you obligated to commit to variables as to design according as to the decisions of the tenant?

Mr. Tatham: I am sorry, are you saying, ~~has~~ we been successful in consummating an understanding with Hydro?

Mr. Shibley: Yes.

Mr. Tatham: If we were successful in consummating an understanding with Hydro predicated on a firm rental rate, it would be related to a firm building for which there would be an outline spec in some substantial detail, there would be architectural drawings in some substantial detail, and we would be building a given project for a given dollar for a given rental.

Mr. Shibley: So that what you view to be the necessary second step, or even third step, I gather this was preliminary, you expected further negotiations, and if you were the successful bidder, so to speak, the third step would be the development of more precise specifications and plans before a final agreement was entered into?

Mr. Tatham: Yes, when you are talking sums of money of this order you have to be very precise in what you are offering.

Mr. Shibley: You mentioned earlier the fact that it is costly to expect a developer to develop a proposal. What is the usual procedure in that respect? In this case there were four developers submitting proposals in the first instance. Would it

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(Mr. Shibley)

be a case of telescoping that to two or three or only one
and asking _____

Mr. Tatham: No, this is just a cost of doing business
in our industry and subject to the nature of the particular
understanding, the nature of the market place, at the time that
that opportunity arises, determines the number of people who
would be interested in making a submission. The industry has
to be receptive and the project has to be sufficiently worthy of
ind try interest to _____

Tape H - 1224 follows

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DT

(Mr. Tatham)

~~the project has to be sufficiently worthy of industry interest to~~
get a competitive proposal.

Mr. Shibley: What I am wondering about, Mr. Tatham, is this; Having asked for these preliminary submissions, is the next step for Hydro to single out one and negotiate with him alone, or is it a case of moving forward with two or more to the bitter end and then make a selection?

Mr. Tatham: Well, this is a matter of judgement. I don't think there is any one single answer to that. People who are in the position to make the decision are the people who make the decision, and there are a number of different approaches.

Mr. Shibley: All right. You know now that the proposals were assessed by Hydro on the basis of what they call a pro-rating of the submissions, adjusting all figures on the basis of a cost of \$34.00 per square foot. Are you aware of that?

Mr. Tatham: Well, I am aware of the fact that, ~~when~~ the first time I met you, you asked me to explain the format that was used and I indicated to you that I was unable to do so.

Mr. Shibley: And why were you unable to do so?

Mr. Tatham: Because it didn't make any sense to me.

MR. Bullbrook: Before you get into the pro-rating, I just wanted to ask ~~me~~

Mr. Shibley: I am not going any further, Mr. Bullbrook, with it because it didn't make any sense to him and that's as far as we can take it.

Mr. Bullbrook: All right. Well, I just wanted to ask one question on the witness's former business dealings in connection with the proposal method. Is it a normal business procedure that a development viva voce, a personal development of the proposal, might be made by the proposer to the people making the decision?

Mr. Tatham: Now ~~me~~

Mr. Bullbrook: I want to be frank with you here.

Electric

It's the Hydro-~~Electric~~ Power Commission that's supposed to make

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DT

(Mr. Bullbrook)

this decision in my opinion. Do you follow me? Now, transferring that to some other situation, and we know in point of fact, I think this is the evidence, that none of the proposers ^{ever} did get to the Hydro Electric Power Commission. Is it the normal business dealings that if you are doing something for Eatons as a matter of fact that the proposers would have an opportunity to get to those people in ~~Eatons~~ Eatons who make the decision?

Mr. Tatham: There is no simple answer, Mr. Bullbrook.

Mr. Bullbrook: I see.

Mr. Tatham: Because in point of fact both approaches are used. There are some organizations, whether they be Hydro or whether they be ^a private company, who retain unto themselves their own method of evaluating the proposals that are submitted and they have their own ~~method~~ system and you are advised whether you have been successful or not successful or they have narrowed it down to two or three and they want to bring these two or three together. There ~~are~~ are a number of approaches. There is another approach whereby I have made complete presentations with renderings and submissions and specs before entire Boards of companies where the entire board wants to be privy and have the opportunity of asking you specific questions relative to your proposal; so there is no one approach that holds.

Mr. Shibley: Now then going back to the ~~point~~

Mr. Walker: Mr. Chairman ~~point~~

Mr. Shibley: I am sorry.

Mr. Walker: Mr. Chairman, I don't think we can leave it entirely ^{at} the point that he made no sense of it. Have you, since that time, made yourself or ~~point~~

Mr. Tatham: May I be specific?

Mr. Walker: Yes, please.

~~Mr. Walker:~~

(S-1225 to follow)

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5:10-5:15 pm
C.B.

~~Mr. Tatham: One of the comments, for example,~~
was relative to quality of architecture, and one of
the comments was relative to a comparison between Y and
R ^P properties and Ellis-Don. I'd never seen this before
until Mr. Shibley showed it to me, and it said, if I
remember correctly, that the Ellis-Don submission architecturally
was better than ours.

I looked at the architects for Ellis-Don. It
was Webb Zerafa Menkes. I looked at the architects for
ourselves. It ~~is~~ ^{was} Webb Zerafa Menkes, so they are going
to make a better submission for Ellis-Don than they are
going to make for us. It didn't make any sense. That's
what I mean.

Mr. Walker: Well, I'm thinking more of the
pro-rata itself. You indicated that when Mr Shibley
brought to your attention the word ~~the~~ ^{an} method of pro-
rating that was used by Hydro officials to arrive at a
comparison, that it made no sense to you. Is that correct?

Mr. Tatham: There were a number of elements
that did not make sense to me. For example, there is
that one. There was the one on the cost of money, ~~whereby~~
we had quoted on a rate of 8-3/8 per cent and another one
was five and some odd per cent, or something, and yet the
rental rates didn't reflect this ~~as~~ ^{very} phenomenal and very,
very important element in cost. It is perhaps one of
the ~~the~~ single largest elements in cost, the cost of money.

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C.B

(Mr. Tatham)

As I mentioned for every eighth point change in the cost of money, we dropped the rent, six cents on another transaction on which we were involved. Therefore, that made no sense. No, I'm sorry, the point that you were referring to —

Mr. Walker: You are familiar with the pro rata principle. *mn*

Mr. ~~Tatham~~ Tatham: My only assumption there was that the meeting that I had with Mr. Candy and with some other person on April 7, was perhaps to try and relate our proposal to this pro-ration of cost. But we never told Mr. Candy what our building cost. He said, "Is it about?" and I said "Yes, it is about" and how much a square foot, but I was talking ~~about a~~ rented foot he may have been talking about a gross foot. That's why I say I haven't seen this since. —

Mr. Walker: I'll just let you look at that for a moment before. —

Mr. Shibley: Has he got this document here?
He's not looking at that one, eh?

Mr. Tatham: Yes....

Mr. Shibley: While the witness is looking at it, I might tell members of the committee I've had produced to the witness what is exhibit 67, the April 10 memorandum of Mr. Candy and Mr. Mink, ~~at~~ page 22 and 24 of that document are two schedules.

Mr. Chairman: Just while you are looking that over, we'll take a five minute recess, Mr. Tatham. .

Mr. Cowper-Smith: Mr. Chairman may I just address the committee for a moment on something I said earlier. I was questioned about campaign contributions from my client. Now I would ~~be~~ just like to set the record absolutely straight on this. I believe I said

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5:10-5:15 pm
C.B.

(Mr. Cowper-Smith)

I wasn't sure how he'd react to that question. I had a reason for saying that, and I'd like to refer you to Hansard page 7 - 1, if I could, and if I may take the liberty of reading from that just briefly. This is paragraph two on page 7 - 1.

"Mr. Shibley: The fourth question is, did Mr. George Gathercole, members of the Ontario Hydro - Electric Commission and the chief architect of Ontario Hydro and the members of the staff of Ontario Hydro or any of them in any way have their judgement respecting the agreement ~~with~~^{for} the new head office building affected by any consideration other than ~~the~~ what was in the best interests of Ontario Hydro and the people of Ontario."

Now the key words in this question, of course, are the words "any consideration", did they have their judgement affected "by any consideration other than what was ~~judgement~~
in the best interests of Ontario Hydro and so on."

~~In answer to the question...~~

H1226 to follow



July 11, 1973

5.15-5.20p.m.

B.A.

H-1226-1

(Mr. ^WCowper-Smith)

... ~~may have their judgment affected by any consideration other than what was in the best interests of the public. I think it is on~~
in this respect, it is my advice to the committee that evidence pertaining to whether Mr. Moog was a contributor to the financial needs of the Progressive Conservative Party, and whether he was a fund raiser of the party, or any other such similar circumstances, is relevant to this enquiry, provided that it is shown that these circumstances affected the judgment of Hydro personnel. The terms of reference given to you by the House to ~~examine~~ examine and review the matter of an agreement and the circumstances surrounding it, and it is my advice and opinion to you that these are circumstances which are properly the subject of evidence ~~before~~ before you. But, may I emphasize again that they are relevant only if it is shown that the fact of ~~a~~ financial contribution to ^a political party or the fact of ^a friendly relationship between ^{the} a member of the House ^{and} ~~and~~ the contractor, or the principal of the contractor, was material to the ~~contract~~ contract in the sense of affecting the thinking of any of the people who are listed in this question. If not, then, of course, the question would be answered in the negative. If so, then I would expect you to consider it otherwise.

So I just want to....

Mr. Chairman: I see the point you are making.

I think it is what comes first.

Mr. Cowper-Smith: Yes. I just want to say that we would like to reserve that question until, perhaps, this issue is resolved.

Mr. Chairman: Well, I don't regard that ^{as coming} ~~as coming~~ first. You may make some representations on it Mr. Shibley, but I don't think you resolve them in that order. ^{Mr. Cowper-Smith:} I don't want to say and I don't want to convey the impression that if my client is asked that question there is any reason to believe

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(Mr. Cowper-Smith)

he won't answer it, but we may seek to make representations at that ~~time~~ time on the question.

Mr. Chairman: Mr. Shibley, you drew those, maybe you will say what you meant.

Mr. Shibley: Yes, all right. I think it is my purpose ~~in~~ in making the observation you have cited is this. That even if political contributions were made or even if Mr. Moog was a supporter of the party or a fund raiser, there needs ~~be~~ shown a causal connection between that circumstance and the obtaining by him of the contract before the ~~question~~ ^{question} could be answered in the affirmative, "was their judgment affected?" And my comments were not intended to suggest that unless there be evidence shown that Hydro minds were affected by contributions would they be introduced, because necessarily, we must have the evidence of the contributions in point of time and amount, in order to weigh the fact of those contributions as to amount and the time made, against the background of dealings with the organization, to come to a conclusion whether there was any causal connection and, if so, whether that question should be answered yes or no. So that, ~~was~~ what I was concerned to do in that respect is to say this, that the mere fact that a contribution has been made, or that Mr. Moog is a supporter of the Progressive Conservative Party, should not per se be taken to mean that Hydro's judgment was thereby affected. He might, and I don't know what his contributions were in those respects, but he might have been a very substantial supporter of the party ~~and~~ ^{and it} still have nothing to do with the thinking of Hydro. But I don't want to be interpreted as meaning that ~~I~~ ^I never considered it relevant. I think we have to have that evidence before we can reach that judgment.

Mr. Chairman: That would be my understanding.

Mr. Cowper-Smith: I guess I misunderstood.

Mr. Chairman: Yes, I think your argument was based on an interpretation that could be put on it, but it was the old

H-1226-3

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5.15-5.20p.m.
B.A.

(Mr. Chairman)

chicken and egg comes first, and you put them the other way around to my way of thinking.

The committee took recess for five minutes.

(Tape H-1227 follows)

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5:30 - 5:35 pm
CA

H-1227-1

The meeting resumed at 5:30 o'clock, p.m.

Mr. Chairman: Ladies and gentlemen, I call the meeting back to order. Mr. Shibley.

Mr. Walker: Mr. Chairman I hadn't finished. That was my ~~impression~~ ^{that was why} the recess ~~was~~ called.

Mr. Chairman: That is right. I had forgotten all about you, Mr. Walker. The floor is yours.

Mr. Walker: Mr. Tatham, if I might take you back to that matter of the pro-rating, You have in front of you the spread, the schedule reflecting the pro-rating. Now, or in what manner, would Hydro arrive at the pro-rata figure that they have applied ~~to~~ to Y and R?

Mr. Tatham: I don't know. ~~The~~ The only discussion that we had in any way related to the cost was the one to which I referred, I had with Mr. Candy and some other gentlemen, and no specific numbers were referred to at all by us, and until today, other than Mr. Shibley and the members of this committee, no one has had knowledge of the fact of what dollars we were carrying.

Mr. Walker: So you in no way conveyed the figure per square foot, either rentable or gross?

Mr. Tatham: No.

Mr. Walker: Or construction costs, or what have you, to your proposal?

Mr. Tatham: If I remember the conversation correctly, something ^{like} "Your building cost about so much", and I said "Well it cost about so much", but there is no detailed discussion as to whether we are talking about a rented square foot, a gross square foot, ~~building~~ building above grade, building below grade, what we were talking about, ~~and there is no~~, as far as I was concerned, that was confidential information to us and there has been no specific information tabled until Mr. Shibley got our files.

Mr. Walker: All right now. The figures ^{they} have used, whatever their source, are used in application to the pro-rating system, a system whereby in this case the top figure of \$34 a foot of Canada Square was used as the benchmark, and to which all other figures were elevated with a repeater credit.

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CA

H-1227-2

Mr. Tatham: As I said, I don't understand. There is no requirement as part of the submission to reveal the dollars that were being carried. We didn't, in our proposal, indicate the dollars that we were carrying for the project.

Mr. Walker: I am sorry, I'm not sure I appreciate that term.

Mr. R.G. Hodgson: There was no benchmark even to his company.

Mr. Tatham: This was confidential information after all. This is where a developer develops. I mean if we can build a better product for less, which is really what we said we could do, that we can rent a better animal for a better rental dollar, then we are going to be full and other people are not going to be as fortunate. Historically our company has had the record for doing just that.

Mr. R.G. Hodgson: In other words, Mr. Tatham, you haven't said \$26 a square foot, or \$28, or \$30 or \$34 in your proposal?

Mr. Tatham: No. And as I said, I don't understand it. And when Mr. Shibley presented me with this information, and he said explain it to him, and I must admit that ~~I didn't~~ hadn't done an in-depth analysis. I just looked at some headings. And I couldn't make sense of them in a very short-term peripheral discussion in Mr. Shibley's office. Now I ~~haven't~~ haven't done an in-depth analysis of them, and I don't want to be hung on my statements, but I was asked for an ~~off~~ off the cuff opinion and I gave an off the cuff opinion based on ~~about~~ one or two specific points which did not seem to be meaningful to me.

Mr. Walker: Well, you also indicated at the time Mr. Shibley put the question to you, you made no sense of it. Have you since that time acquainted yourself with this approach? If it may be called that?

Mr. Tatham: No, I've got a business to run, and this is certainly not my business. I am out to win new deals. I have a company to run. This is past business. This is just taking up time.

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CA

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Mr. Chairman: Mr. Walker, I think Mr. Shibley was leaving it that he hadn't studied it and he was not an expert on it. Now I don't know whether we want to turn, at this point, Mr. Tatham into an expert on this pro rata system.

Mr. Walker: Certainly not, Mr. Chairman.

Mr. Chairman: He said he couldn't make sense of it, and I think Mr. Shibley was content to leave it at that.

Mr. Tatham: No one has explained it to me, by the way.

Mr. Walker: That is the point I was trying to get at. I really wanted to find out if you had ever heard of this approach before now. We are a bunch of laymen, and we hadn't heard of it before, but that doesn't necessarily mean it is not universal.

Mr. Tatham: I have never heard of the approach before. I don't understand the approach, particularly when there is no requirement to submit. This is not meaningful unless.

H-1228-1 follows



July 11, 1973
5.35.5.40 p.m.
M.F.

H - 1228 - 1

(Mr. Tatham)

~~to submit this is not meaningful unless~~ you did a very in-depth analysis of every project, a very in-depth analysis.

Mr. Walker: Now I believe the figure that was applied to Y and R was \$28. I think that is - I have forgotten all my figures but ~~-----~~

Mr. Tatham: Is that a gross square foot and how does it relate to the figures that I have just tabled?

Mr. Bullbrook: It uses the word provisional.

Mr. Walker: Provisional?

Mr. Bullbrook: \$28.00 provisional.

Mr. Walker: And brackets beneath it. All right, ~~-----~~

~~Some discussion between members of the committee~~

Mr. Shibley: Maybe I can clear this up ~~-----~~

Mr. Tatham: As it happens that would be very close to the cost per rented foot.

Mr. Walker: So wherever they got the figure, it does reflect roughly what the actual figure would tend to be?

Mr. Tatham: Not necessarily, because I am ~~in~~ talking about ^a rented foot and these other figures are a gross square foot, so there is a complete distortion.

Mr. Bullbrook: May I address myself to Mr. Walker through you, Mr. Chairman? I also think that one of the valid points that the witness is attempting to make is that nowhere did Hydro ever request him to disclose how much per square foot it was costing him. As he says if he builds ~~their~~ building at a cheaper cost, if he gives a better rental, it has no relationship to the cost per square foot, nor did he ever disclose it in the proposal.

Mr. Walker: I gathered that point from what he said.

Mr. Shibley: I gather, Mr. Tatham, you were never asked to quote a rate on the basis of a \$34 ~~-----~~

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M.F.

H - 1228 - 2

Mr. Tatham: Other than this one conversation I had with Mr. Candy and some other gentlemen, and as I said figres were put in our mouths and I said "Well about..." I certainly was not going to - as far as I was concerned this was our business.

Mr. Shibley: Mr. Tatham, just to clear up the figures, you have cited a cost of construction per rentable square foot of some \$23 odd, and have said that it would be something less than that per gross square foot? You excluded from that figure the cost of interim financing and design costs. How much per square foot would that add to a building of this size?

Mr. Tatham: About \$5,000,000.

Mr. Shibley: And accordingly we can add another \$5.00 per square foot for those items?

Mr. Tatham : Yes.

Mr. Shibley: So that in the overall you are talking of a building of say \$27 to ~~\$~~^{\$}28 per square foot - \$28 per square foot rentable. Is that right?

Mr. Tatham: Yes.

Mr. Shibley: And it would be under \$28 per square foot gross?

Mr. Tatham : Now keep in mind we are talking about a very efficient building here, we are talking about a building that has an efficiency ratio in excess of 93 per cent.

Mr. Shibley: Would you explain that to this committee please?

Mr. Tatham: Well the whole structuring of this particular - as I attempted to say before, what we have referred to in our proposal as a new generation office building, where you have a site which is sufficiently large that permits you to build a large floor area building, relatively low in height, you can, by virtue of having a small vertical elevating requirement, gain maximum efficiency. By that ^I mean a high ratio of rentable area to total floor space, and as I keep trying to say, it is the rented foot that is the important foot. Therefore, if your building is more efficient in basic design, some buildings are grossly in-

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M.F.

H - 1228 - 3

(Mr. Tatham)

efficient, some of them have efficiency factors ~~70~~ 70 per cent, not 90 per cent. Therefore the premium that you pay for that design inefficiency in a rental dollar is very, very significant.

Mr. Shibley: Because of the massive floor area, the fact it is slow rise, these are the factors, in part at least, that create the efficiency rate that you are talking about?

Mr. Tatham: Very definitely, and yet ensure a very high quality building.

~~Mr. Shibley: Yes, and I would say that a building with a 70 per cent efficiency rate, that means that it is not a very good building.~~

Tape H - 1229 follows

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5.40 to 5.45 pm
DT

Mr. Shibley: Yes,

(and if you get an efficiency rate of 92 per cent, that means that you can rent more space with less waste space that doesn't generate revenue. That's really what it comes down to.

Mr. Tatham: That is right. If you had a building that costs, say, something that we can do in our head, \$30.00 a square foot rented area, project cost, development cost or whatever we want to ~~call it~~ and you had a 90 per cent efficiency as opposed to, say, an 80 per cent efficiency, 10 per cent ~~improvement~~ improvement of your 30, you are talking there at 10 per cent of \$30.00, ~~you are talking there at 10 per cent of \$30.00~~ You have to think in terms of a financing cost, but let me use a 10 per cent cost of money. Let's say the financing cost is \$3.00 a year and the efficiency improvement is 10 per cent, that's 30 cents a ~~square~~ foot of the rental dollar saved.

Mr. Shibley: Now, on that basis, MR. Tatham, the high efficiency ratio of this building should represent a lower rental rate.

Mr. Tatham: Oh, very definitely, yes.

Mr. Shibley: All right, ~~that~~ I am trusting that the committee is still with us in this ~~same~~ respect. We have a building ^{that} because of its nature, has a high efficiency rate, and from the developer's point of view, you should be prepared to take less as a rental because of that factor.

Mr. Tatham: Yes.

Mr. Shibley: You can make as good a return, so to speak, at a lower rate of rent in a high efficiency building?

Mr. Tatham: Yes.

Mr. Shibley: In the sense of rentable space against gross space?

Mr. Tatham: Yes.

Mr. Shibley: And you categorize this building as a high efficiency building?

Mr. Tatham: Well, it is one of the most efficient that I have ever run into in my experience.

Mr. Shibley: ~~Yes~~ I see.

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DT

Mr. Chairman: This building again is referring to which one?

Mr. Tatham: Well, the one that we proposed.

Mr. Chairman: The one that you ~~are~~ proposed?

Mr. Tatham: The one that we proposed.

Mr. Shibley: Now, then, on the basis of an overall cost of \$28.00 ^{per} ~~the~~ rentable foot for your building, is there any basis upon which you could expend an additional \$6.00 per square foot for your building?

Mr. Tatham: Could you spend it?

Mr. Shibley: Yes.

Mr. Tatham: Oh, it is easy to spend money. The difficult thing is to save it.

Mr. Shibley: That's Mr. Allan's line.

Mr. Tatham: I am sorry, MR. Allan, I didn't know that was your line. Yes, you know, you can really spend money, as I said, very easily.

Mr. Shibley: Well, Mr. Allan has put it in these terms: Was it necessary for Hydro to establish \$34.00 per gross square foot as a benchmark in order to get the building of the quality it was after?

Mr. Chairman: In your opinion.

Mr. Tatham: I am glad you put that in, Mr. MacBeth.

Mr. McCallum: I am, too.

Mr. Tatham: The building that Y and R proposed is a very high-quality building in every respect and relates to meeting the floor-loading requirement which was exceptionally high, the lighting level which was exceptionally high, the air-conditioning quality which was very high, double glazing which was high.

Mr. Bullbrook: Well, just one moment then, sir, am I correct that actually in the first two items that you mentioned, floor loading and light quality, it is actually higher than the one they accepted?

Mr. Tatham: Yes, the only area where money has been spent on that particular building which hasn't been ~~spent on this~~

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5:45-5:50 pm

C.B.

(Mr. Tatham)

spent on this particular building is in ^{the} premium cost for curtain ~~a~~ wall.

Mr. Shibley: Now when you refer to that you ~~say~~.

Mr. Tatham: Now, I haven't seen the specs. I'm just going by the specs that were asked for.

Mr. Shibley: When you ~~w~~ said ~~that~~ that particular building, you were pointing out the model of the building being developed by Canada Square and when you say "ours" you referred to the photograph of the presentation of your own building.

Mr. Tatham: Right.

Mr. Shibley: And you say the only ~~one~~.

Mr. Tatham: Assuming that building were built to the specs that were called for. In other words, we had light air troughers, which is ^{the} very high quality means of supplying air and returning air. We had envisioned regressed lenses, which is a lighting source, where you don't get glare like you get in this room, and we met the specifications, double glazing and all of these features. ~~So that -~~ ^{As} it was a very good quality building.

Mr. Shibley: So that are you telling, in answer to my question wherein I adopted the phraseology of Mr. Allan, is there any basis upon which a bench^{mark} of \$34 should have been established by Hydro to obtain a building of the quality that it desired?

Mr. Tatham: The ~~\$34~~ \$34-figure can be a very low figure...

Mr. Shibley: Yes.

Mr. Tatham: Compared to some buildings that have been built in the city of Toronto of a different configuration.

Mr. Shibley: Yes.

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5:45 - 5:50 pm

.C.B.

Mr. Tatham: Therefore, the ~~question~~ question is really not a fair question.

Mr. Shibley: All right, then I withdraw it.

Mr. Tatham: You are asking me a question that Hydro might have had very good reason for establishing a figure of \$34, based on the experience they had. After all what we were proposing to Hydro is something that has not been done in this city to this point in time.

Mr. Shibley: What do you mean by that?

Mr. Tatham: Well, a building of this size, of this quality, of this calibre in the downtown core area for these rental rates has not been produced.

Mr. Shibley: I see. I take it you are approaching it from the opposite point of view then, Mr. Tatham, that the building that you were submitting met the quality standards set by the Hydro and could be built for a cost of ~~a~~ \$28 per foot net rentable area.

Mr. Tatham: Yes.

Mr. Shibley: And at that cost, inclusive of \$1,300,000 for items that were deleted or varied in the specification that I pointed to which governed the Canada Square development.

Mr. Tatham: Based on what we ~~discussed~~ ^{used} earlier today, yes.

Mr. Shibley: And with an allowance of some \$600,000 for the items we discussed earlier.

Mr. Tatham: Yes.

Mr. Bullbrook: May I ask one question about - I'd ask counsel to help me. I think if my recollection of the evidence is correct, there was about ^{\$250,000} ~~\$25 million~~ expended ~~for~~ to be expended for a tunnel, and I don't recall Y and R having put that in. I'm just wondering if they had anticipated that?

July 11/73
5:45 - 5:50

C.B.

(Mr. Bullbrook)

You did have it in, sir?

Mr Tatham: No, we did not have it in. It came up as a subsequent item ^{item} to which we referred. We became aware of that tunnel. ~~work~~.

Mr. Shibley: You will notice there is a note on X-1 at the bottom in pencil.

Mr. Tatham: Yes.

Mr. Shibley: "Add ^{that} tunnel in structural."

Mr. Tatham: I think it worked ~~it~~ out to about two cents a square foot or something like that.

Mr Bullbrook: That's what I want to do in fairness to Canada Square, work it out, ^{at} two cents a square foot ~~approximately~~.

Mr. Shibley: Now, Mr. Tatham, can you give us your calculation, based upon your submission of the amount per annum of the return to Y and R, had it been successful in having its proposal accepted.

Mr. Tatham: On which side? On the Hydro side.

Mr. Shibley: On the Hydro side.

Mr. Tatham: I would think that ~~the Hydro side~~

H1231 to follow



July 11, 1973

5.50-5.55p.m.

B.A.

H-1231-1

(Mr. Tatham)

~~Mr. Chairman: I would think that subject to~~
Mr. Tatham : I would think that subject to

unknowns, ~~when we discussed~~ when we discussed earlier today the risk of construction cost, strikes and things, I would think that we would have had half a million dollars plus, a year.

Mr. Shibley: A half a million dollars, plus, a year. And with what investment?

Mr. Tatham: I would think with no investment.

Mr. Shibley: And, of course, if the cost of ~~the~~

Mr. Tatham: When you do it right, it is a very good business. When you do it wrong, you are in trouble.

Mr. Chairman: With no investment, it's a little bit of ~~know-how~~ know-how in there.

Mr. Tatham: It is a little bit of know-how in there.

Mr. Shibley: At the cost of \$28.00 per square foot of rentable space, was a construction profit included?

Mr. Tatham: No.

Mr. Shibley: At the rental rate that you ~~proposed~~ proposed, was a profit included which related to the cost of construction?

Mr. Tatham: Well, the answer to that again, is no, because ~~they~~ they are one and the same thing.

Mr. Shibley: All right. And at a maintenance rate of \$1.34, I understand that ~~that~~ that did not include a profit element.

Mr. Tatham : No.

Mr. Shibley: ~~That~~ That was your projection of your actual cost of maintaining the building, is that correct?

Mr. Tatham: Yes.

Mr. Shibley: So that when you talk about a half million dollars, plus, a year, profit, that is for know-how in developing the site.

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#5.50-5.55p.m.
BA.

Mr. Tatham: Well, ~~these~~ ^{for} we are investing our entire expertise and that's ~~not~~ taking no mark-up for that expertise.

Mr. Shibley: Yes. With respect to the ~~Park~~ Centre site, was your presentation such that your profit would be lower?

Mr. Tatham: Yes.

Mr. Shibley: And what was your reason for doing that?

Mr. Tatham: Well, we ~~are~~ were anxious to use this particular development as a catalyst for getting ~~the~~ ^{at} project under way.

Mr. Shibley: Was there any profit element in that proposal?

Mr. Tatham: Yes, but it was not substantial.

Mr. Shibley: It ~~was~~ was which?

Mr. Tatham: It was not substantial.

Mr. Shibley: How much?

Mr. Tatham: Well, again, that would be subject to the way it was financed. I don't have a figure here that shows that, that I can refer to Mr. Shibley;

Mr. Shibley: All right, never mind. Did your firm in computing its rental rate, take into account the circumstance as to whether capital ~~was~~ cost allowance would be permitted by the Department of National Revenue?

Mr. Tatham: Oh, yes. This is a very important aspect of the whole area of development. We have very sophisticated computer models which are - people put each of our analyses through and we have structure deals, as I have mentioned earlier today, where there are options to purchase at points of five years, ten years, 15 years, 20 years, 25 years, subject to the deal, ~~and~~ this is a very important element of what value is placed on at those points in time. And again, our financial people are the people that you would have to talk to about that type of thing.

H-1231-3

July 11, 1973
5.50-5.55p.m.
B.A.

Mr. Shibley: I want to refer you again to Exhibit 67, I believe it is, at page 21, wherein there is a break-out of ^{It is} ~~Table~~ 1, actually.

Mr. Tatham: Are you talking about this?

Mr. Shibley: Yes, thank you. You earlier made reference to the column which contains the financing cost, ~~and~~ I think it is a matter of some confusion to all of us, Mr. Tatham, as to why the rate of financing should have been set forth in that manner and otherwise treated in other areas ~~as a financial~~
~~circumstance in fact~~
~~is it~~

(Tape H-1232 follows)

July 11/73
5.55 to 6.00 pm
DT

↓ (Mr. Shibley)

as a material circumstance when in fact it's the rental rate, is it not, that is the inclusive figure, the figure that is to include in it the cost not only of constructing the building, maintaining the building, but ~~we~~ also ^{to} reflect the financing cost as well?

Mr. Tatham: Well, my assumption was -- this was specifically asked as part of the proposal that the developer should identify his cost of financing.

Mr. Shibley: Yes.

Mr. Tatham: And as I have indicated earlier, the cost of money is a very important and a very large part of the rental dollar.

Mr. Shibley: Yes.

Mr. Tatham: It is perhaps the most significant part of the rental dollar if one excludes some of the other risks that we were talking about earlier. Therefore, I assumed Hydro in its wisdom wanted to know what the capacity was of the developer for borrowing money, making use of their covenant, in the marketplace, and all our calculations were made on the basis of eight and three-eighths per cent Canadian money.

Mr. Shibley: Yes, that's domestic source of funds.

Mr. Tatham: Yes.

Mr. Shibley: Without any ~~any~~ risk as to exchange rate?

Mr. Tatham: Yes; no, there is no risk.

Mr. Shibley: All right. Now then, you will notice in this breakout that Canada Square is shown as saying that its financing costs for \$20 million of the overall would be \$6½ million and the balance at seven and three-quarters. Do you see that?

Mr. Tatham: Well, yes, but the judgement that has to be asked there is, who is assuming the foreign exchange risk, whether that is the developer or whether that is Hydro.

Mr. Shibley: Well, leaving aside for the moment foreign exchange risk, if you could just change hats for the moment and think of yourself as ~~be~~ sitting on Hydro's side

H-1232-3

July 11/73
5.55 to 6.00 pm
DT

(Mr. Tatham)

have an underwriting by a Canadian bank and a Canadian bank^{to}/_{do}
that underwriting would charge a fee. It might be a point,
a point and a half, two points, subject to the money ma^rket
at the time.

Mr. Shibley: Yes.

Mr. Tatham: So your 6½ becomes 7½ or 8 or some
such sum of money.

~~Mr. Shibley: Now as at the time your proposal was
your own proposal up~~

(H-1233 to follow)

July 11/13
6:00- 6:05 pm
CA

H-123301

(Mr. Tatham)

~~some other person's money~~
Mr. Shibley: As at the time you were making your own proposal up, were you aware that funds were available in Switzerland and in the United States?

Mr. Tatham: Oh we had sent people over there. We have had some banking connections, and we have explored all these avenues, yes.

Mr. Shibley: ~~Was~~ The circumstance of money available in the foreign markets at lower rates to begin with ~~was~~ known to you at that time?

Mr. Tatham: Yes.

Mr. Shibley: This was not unique unto Canada Square that foreign funds were available at those lower rates?

Mr. Tatham: No.

Mr. Shibley: And in fact it ^{is} simply a circumstance of lower initial cost, but when added to that you have the ~~costs~~ costs you've mentioned, the costs are comparable to domestic sources?

Mr. Tatham: Being in the money market is a very sophisticated business, and there are people with ⁱⁿ Hydro who are extremely knowledgeable about raising millions of dollars on the market, and I am sure that they know every avenue of shopping for whatever funds are available at a current moment in time.

Mr. Shibley: The point I am driving at, however, Mr. Tatham is that the mere fact that Canada Square was saying that we are going to borrow our money ~~from~~ ^{from} foreign sources, but at Hydro's risk as to exchange, the combination of those two facts should not have led Hydro to the conclusion that because Mr. Moog could borrow initially or basically at lower rates, this gave him some posture of advantage ~~of~~ over the other developers?

Mr. Tatham: Well based on the limited knowledge I have of the money markets I would think that Hydro would not take that position with all the sophistication they have.

Mr. Shibley: Well we have the benefit of looking at their documents to reach our conclusions in that respect, Mr. Tatham, and you don't, and we'll carry on from that point.

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6:00 - 6:05 pm
CA

H-1233-2

(Mr. Shibley)

While we are on this comparison that was made, you have already responded to Mr. Walker's questioning. I don't know that there is any purpose served in asking you if there is anything you can add.

Mr. R.G. Hodgson: How late will you go, Mr. Chairman?

Mr. Chairman: You are just about through?

Mr. Shibley: I've only got one or two clean-up questions right now. I'd like to finish.

Mr. Bullbrook: You want to get away?

Mr. R.G. Hodgson: I'd like to, yes. Wouldn't you?

Mr. Deans: When you talk about getting away, I suppose, other members of the committee have questions, I certainly do.

Mr. Bullbrook: Do you think that we are logically going to be able to close tonight with this?

Mr. Deans: I have a number of questions, I might say, dealing with other matters.

Mr. Bullbrook: Start early in the morning.

Mr. Chairman: Mr. Shibley does need some time before we get into the next phase. He needs at least a clear business day. We were hoping that we might clear tonight and get on on Monday with the next phase, but if we take up all of tomorrow morning then it is not going to give Mr. Shibley enough business time I think to continue on Monday. Now is there

Mr. Bullbrook: Do you want to miss Monday?

Mr. Chairman: Well there is a case of missing Monday.


Mr. Shibley: Well that is what I think will happen. I think what we should do then, if there are a number of questions, Mr. Chairman, I think what should be done is we adjourn now, with apologies to Mr. Tatham, ^{and} ask him to return tomorrow morning. Use up whatever time is necessary to complete his evidence then. I may then decide, if we are going to convene to supplement his testimony. I was going to today if we had had time with that of Mr. Safrance, so as not to make it a day with less evidence than we can fit in. I have not interviewed Mr. Zwig I might say, and

6:00 - 6:05 pm
CA

H-1233-3

(Mr. Shibley)

I don't know that he is going to add a great deal to the evidence. I had intended, after completion of this witness's testimony, to go to the examination of Mr. Moog, and I want some time to prepare. I have a long-standing commitment to assist on a conciliation proceeding on Friday.



H-1234-1 follows

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6:05 - 6:10 pm

C.B.

(Mr. Shibley)

~~Long-standing commitment for a long time a consultation~~
~~proceeding on Friday.~~ I think we'll reach our collective agreement very quickly, at least that's my hope.

Mr. Deans: That is what you said early in May.

Mr. Shibley: But that does kill the best part of one day. I've been relying very heavily on Friday, Saturday, Sunday to do my preparation for the week ahead. Now if we slip into tomorrow with this witness and other evidence, then I'm going to ask the committee not to sit on Monday at the very least.

Mr. Bullbrook: May I clarify something. Mr. Deans obviously has some significant questions to ask. I don't have many questions, if any to ask. My main concern Mr. Chairman was, I sensed a certain disenchantment on the part of counsel for Hydro and I wanted him to be amply sure, as the counsel for Mr. Moog is, that recognizing that through other Hydro witnesses or himself, through Mr. Moog, they can take issue with the evidence of this witness, That they have ample opportunity through our counsel to put questions to Mr. Tatham if they want to do so, and that was my main concern about now.

Mr. Deans: Mr. Chairman, if I may, I'd be prepared to stay another hour if that will help get the thing cleared up. I don't know, I don't have a lot of questions, I have some questions and I don't know how long the answers will take.

Mr. W. Newman: Mr. Chairman, I just say this, in fairness to the witness, it has been very, very, it is a long and difficult day for him, and mind you I'm prepared to stay for a couple of more hours, but ~~no~~ I'm not really, but I think in fairness to ~~the~~ the witness,

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C.B.

(Mr. N. Newman)

and I'm sure questions by Hydro....

Mr. Bullbrook: Let's ask him.

MR. Allan: I think, Mr. Chairman, you should pay some attention to what my good ~~the~~ friend has said to you as far as the counsel for Hydro, *in case they wish to..*

Mr. Chairman: I had already mentioned the point with Mr. McCallum on the basis that we might ~~finish~~ finish our questioning and ~~it was subject~~, as I note, because ~~Mr. Tatham was there~~, ^{the} the possibility of a recall if he wasn't satisfied ~~that~~ that other witnesses might bring in the evidence he wanted to perhaps refute ~~it~~ or at least give contra evidence to some of the points that Mr. Tatham has made. But, Mr. McCallum, let's ask you now, at this point, would you rather that we give you a chance tonight to prepare some of those questions. I know you don't have the, *and*

~~Mr. McCallum: I would like to do that.~~

~~Mr. Chairman~~: Mr. Shibley suggested that he would like you to do that.

Mr. ~~Mr~~ McCallum: He'd like me to do what?

MR. Chairman: To prepare your questions tonight. I know you don't have the transcript though, and I don't know when you'll have it. Earlier you mention~~d~~ you would perhaps like to have the transcript.

Mr. McCallum: I'll decline that invitation. I'll not be ready, under the circumstances of today, I'll not be ready to put any questions to MR. Shibley in respect to this witness tomorrow. I'm sorry.

Mr. Chairman: All right.

Mr. Bullbrook: I just ~~want~~ ^{want} to make one thing clear, okay, with MR. McCallum, through you Mr. Chairman. Recognizing this isn't a judicial function, but the normal name of the advisory game isn't preparing - having a

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C.B.

(MR. Bullbrook)

transcript

~~transcript~~ available to you, and we are bending over backwards because I felt that perhaps Mr. McCallum had misinterpreted the strictures that might have been put on, and I use that word advisedly and subject to your chastising me for using that word Mr. Chairman.

Mr. Chairman: NO.

Mr. Bullbrook: I want MR. McCallum not to feel inhibited to voice to this committee ~~himself~~, through the chair, his feelings on this.

Mr. McCallum: Fine, I'd be glad to take that invitation right now.

Mr. Bullbrook: May I say this. I want him to address himself to this comment about not being prepared tomorrow. Mr. Shibley is a counsel of great experience and talent, and I haven't had any judge ever say to me, now we'll prepare a transcript and give it to you tonight so that you can prepare your questions. This is something that I don't think is really germane to his task, as far as assisting our counsel to elicit questions that Hydro wants to have elicited.

Mr. Chairman: I think before we ask Mr. McCallum, I think what Mr. McCallum may or may not have to say will not depend whether we sit tonight or not, or tomorrow morning. Is there any thought that we might adjourn and come back at eight. Does anybody like that idea. No, all right, that's out. Well then I don't think we should continue longer now. I think on that basis we should come back tomorrow morning at 10 o'clock.

H 1234 - 4

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6205 = 6:10 pm

C.B.

Mr. Renwick: Mr. Chairman, I wasn't here this morning, and it's quite obvious that the tension between counsel for Hydro and the committee or some of its members and the counsel has clouded the atmosphere. I think that we better get it cleared up pretty God damned quickly, as far as I'm concerned.

~~Mr. Chairman, I have a question to ask you.~~

~~7-11-73~~

H1235 to follow

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6.10 to 6.15 pm
DT

~~(The atmosphere was very tense and we were all very nervous and up pretty God damned quickly as far as I was concerned.)~~

Mr. Chairman: I am prepared to do that, but I didn't want Mr. Tatham to be in the middle of the fire. That's why I wanted to excuse him. ^SSo, MR. Tatham, if you would be prepared to come back here tomorrow morning at 10 o'clock, I think that's what we had better do. Did you want to bring Mr. Tatham into this?

Mr. Renwick: No, I don't want to bring Mr. Tatham into it.

Mr. Chairman: So we will excuse you from there, ~~and~~ and Mr. McCallum can then speak, ~~and~~ I think he should, at this point, either from where he is or can move up to this other table.

Mr. ~~Chairman~~ McCallum: Thank you.

Mr. Renwick: As I understand it, Mr. Tatham will be ~~moving~~ coming back tomorrow morning at 10 o'clock.

Mr. McCallum: ~~Q~~ Thank you. I thought again -- I guess it was a question of a discussion out in another room, that we were possibly not going to proceed tomorrow but that Mr. ~~T~~ Tatham would be in a position where he could be called back at a later time when we had an opportunity to consider these matters. ~~and~~ There again, that happened only just a very few minutes ~~ago~~ ago, relatively speaking, and now the circumstances appear to have changed, although I must say to you, Mr. Chairman, I don't think anything has changed from the discussion that we had --

Mr. Chairman: No, I agree with you --

Mr. McCallum: -- half an hour ago and I had hoped that we would stay with that arrangement, ~~and~~ I just say to you and Mr. Shibley, it's a great convenience to me, and for the reasons that I have stated to you, let's stay there if we can without going into any perorations tonight. I have got other things to say to you, but I will ~~sp~~ bide my time ~~and~~ thanks.

Mr. Chairman: Let Mr. Shibley speak now, ~~but~~ I think Mr. Renwick, who wasn't in on the earlier part, would like to know what your objections are, but Mr. Shibley has some

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DT

(Mr. Chairman)

comment here.

Mr. Shibley: There are two concerns, and I am most anxious that Hydro counsel be accommodated on both. First of all, I am anxious that if he has any position to take of record which he feels is necessary to record contemporaneously with the giving of this witness's evidence, he should be afforded that opportunity, and in that context if he wishes to make a statement now, he should be invited and offered the opportunity to do so.

With respect to the further questions to be put to this witness through me, emanating from his testimony to date, I think that the following course is probably most fair to Hydro. We will complete the examination of this witness tomorrow with all committee members asking questions. We will go from this witness to other witnesses, including witnesses from Canada Square and other witnesses from Hydro. From both sources, I anticipate that they will have evidence which directly relates to topics that have been covered with this witness, and may be in contradiction to or a variation from what he has said or by way of what he has said, or by way of explanation, ~~or by way of explanation~~ ^{or by way of explanation} ~~circumstances that cause~~ ^{circumstances that cause} different results and in the normal course of hearing evidence on both sides of a question. If by the time that evidence is complete, counsel for Hydro or anyone else affected by the evidence of this witness, and for that matter this ~~is~~ holds true again of all witnesses, wants to come to me and say, notwithstanding that this other evidence has gone in by way of rebuttal or explanation, I would like you to recall Mr. Tatham and put these supplementary questions to him; ~~here~~ ^{these} are the ~~references~~ ^{references} to Hansard that we are concerned about and here is the area of examination to be encompassed by your further review; ^{?"} I would be glad to undertake that to Mr. McCallum at this time.


Now, what concerns me much more, therefore, is not the opportunity in the future to Mr. ~~McCallum~~ McCallum or whoever is acting for Hydro to put questions to this witness through me;

H-1235-3

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DT

(Mr. Shibley)

that's always available subject to Mr. Tatham's being available, what does concern me is the first of the two elements, and I think that's what Mr. Renwick was directing his mind to, Mr. McCallum, and that is that if there is ~~the~~



(H-1236 to follow)

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6.15-6.20

B.A.

H-1236-1

(Mr. Shibley)

~~of the committee, and I think people are in a position to~~
~~was directing his mind to, Mr. McCallum, and that is what~~
~~of them is~~ anything in your mind at this time that you feel should be made a matter of public record to be assessed against the ~~and~~ weight of the evidence given by Mr. Tatham, then you should be given the opportunity so do to. Do I read you correctly in that respect, Mr. RENwick?

Mr. RENwick: Yes.


Mr. Shibley: Now, if I have cleared up the second situation with you, and if that is your preference as to the putting of questions, I gather it is, is it?

Mr. McCallum: My preference is, as we have indicated, that we have an opportunity to get these questions ready, I certainly have had two reasons for being concerned with what had transpired today. Obviously ~~as~~ if the decision of your committee is that we have an opportunity to do this at a later time, the ~~and~~ weight of these reasons is not nearly as much as it would have been had I ~~as~~ had to go on now or tomorrow, so that I don't propose to make a big matter of it. But, on the other hand, I think perhaps it wouldn't be a bad ^{for me} idea ^{to} refer to both matters so that you would have an idea of what has been bothering me.

Now, in the first instance, this morning, I asked for information as to what site was being referred to in the evidence of the witness. I was told I was making a ~~lot of~~ lot of interruptions. It's true I had asked some other questions ~~and~~ earlier. And I was asked to save my objections and make a statement at the end. After some discussion I agreed, and I have observed that ban ~~on~~ on my participation. ~~Now~~

Mr. Chairman: Yes, you have.

Mr. McCallum: Now, I want you to know, Mr. Chairman, since it was your ban, that I think that such a ban on my



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6.15-6.20p.m.

B.A.

(Mr. McCallum)

interjection or my need to ask questions was really an unfair burden on Hydro under the circumstances. I have found it difficult today, from time to time, to sit here when I knew that I ~~couldn't~~ couldn't follow some parts of the evidence, sometimes we couldn't find the appropriate papers, and I realize, on the other hand, that it would be good for me to be quiet and, at the same time, it would serve to demonstrate to you that ~~the~~ Hydro have a vital interest in these proceedings, and I ask you to have more forbearing of our ability to conduct ourselves properly in this form. I think we have not heretofore abused it and I give you our undertaking, we don't intend to abuse the privilege that you have accorded us to ~~get~~ get into the act from time to time.

But you see, today, after you did that, let's see what happened. I said, yes all right, I won't intervene any further. Having made that undertaking, then Mr. Fatham went on with his evidence, members were specifically invited, you'll find in Hansard at page 1180 ^{they} they were specifically invited to ask questions of this witness so they could have a general understanding of other matters. In addition, ^{members} they have of course, exercised their right, as they have every time, to ask for information from time to time if they couldn't follow the ~~evidence~~ evidence. I didn't have that privilege. When I agreed to remain silent, I had absolutely no thought that the evidence of this witness would cover more than just his involvement in this particular Hydro ~~the~~ transaction. I certainly never anticipated, and this is doubly so after the conversation we had last night, and we had been discussing the prospect of his evidence being through in two hours. So that even as recently as ~~late~~ late last night, when the three of us left the room at the end, I had no reason to anticipate that his evidence would be used to set a standard or benchmark of what risks are usually attendant upon a development, so that the risks in the Hydro deal could be,

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B.A.

(Mr. McCallum)

and were, compared against that benchmark. Now, if you will
look at page 1194-3 in the transcript, you will see that ^{that} is
exactly how that aspect of this witness's evidence was [^]



(Tape H-1237 follows)

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6:20 - 6:25 pm
CA

H-1237-1

(Mr. McCallum)

~~What is exactly how that aspect of this witness' evidence was~~
summarized by Mr. Shibley. It was clearly, in my submission to you, used as a benchmark, and that is a very difficult thing for us to meet, and certainly it took us completely by surprise. I want to say to you that I have sat and I have listened to a discussion earlier among the members of your committee as to whether or not the witness was ~~was~~ giving opinion evidence. Now the lawyers here know what is meant by this. Opinion evidence is evidence that comes from experts who are impartial and who give every appearance of being impartial, and whose opinions as to benchmarks or standards of risks of the conversion of foreign currencies, of rental rates that should be applied, are matters which you will want to use to measure this other deal up against that standard. Gentlemen, I say it to you simply: It is invidious really for Mr. Tatham, I trust him completely, and I imagine I have known him longer than anybody else in the room, but it is an invidious position for him to be placed in, being a person who participated in this matter, to be attempting to set the benchmarks or standards against which it should be viewed or judged. Now those matters have been giving me some concern. There was this element of surprise, and there was this other element. I have no personal animosity in any way, ~~shape~~ ^{shape} or form, nor have Hydro. You have asked me, and I have tried to say it as properly and as fairly as I can what was causing me some grief throughout the day. Those were my problems as you see them. Now I think those problems may well be overcome when we have an opportunity to consider this man's evidence and address ourselves to it at that time. And if you will just give me that opportunity I won't ^{bore} ~~bores~~ you further tonight.

Mr. Chairman: Well, Mr. McCallum, I appreciate what you have been saying. I was quite surprised that you took my request ^{in the} ~~in the~~ sense of remaining silent even to the point that you wouldn't ask what page we were at and things of that nature. ~~because~~

Mr. McCallum: You told me that I couldn't get into it unless you were away off the track, and I don't regard that as being an invitation to get in when I felt like it.

H-1237-2

Mr. Chairman: When I was talking that way, of course, I was thinking to raising objections to what the witnesses were saying.

Mr. McCallum: I may not have understood your English, that is the problem.

Mr. Chairman: Well, it was clear enough. I am not the most explicit when it comes to English, and in that sense I apologize to you. I am not a trial lawyer like some of the other experts that we have with us on this committee. However, I did ask you to reserve your questions and I did ask you to reserve your objections until the end. And I didn't mean to ^{carry} ~~over~~ it to the extent where if you didn't know what evidence we were looking at that you couldn't ask that type of question. And if you have carried it to that extent through my inability to explain it more clearly, or lack of doing so, I apologize to you.

Mr. Renwick: Mr. Chairman, if I may just, in an endeavour to be helpful, Mr. McCallum may not have been communicating verbally, but he was certainly communicating non-verbally all afternoon. The communication was pretty penetrating. I would think that the problem with which we are involved is one which perhaps,

Mr. McCallum: I have a talent I didn't know I had.

Mr. Renwick: Mr. Shibley and the chairman and Mr. McCallum and other counsel who may be interested in this topic might find the time to spend a half an hour exchanging views about the problems so that we don't run into it head on again or in an unsatisfactory manner. I think it is, ^{according to} what little I know about the question which Mr. Laidlaw raised the first day, and which Mr. Genest spoke to at that time about committee hearings, when they ~~xxx~~ are dealing with non-general matters and ^{verge} into areas of specifically where reputations, corporate or otherwise are involved, that I believe

H-1238-1 follows



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6:25 - 6:30 pm

C.B.

(Mr. Renwick)

specifically where reputations, corporate or otherwise, are involved that I believe there are no very clear-cut rules established as to the extent to which we must move into all of the protective areas of evidentiary law. I don't anticipate that in the course of this committee we are going to solve all those problems either, or that we are going to come up with a code of rules. But I do think an informal exchange between the chairman and counsel for the committee and counsel for Hydro and counsel for Mr. Moog, and any other counsel that wish to do it, ~~might~~ might very well be helpful in solving the procedural question as to how we deal with this problem. We've got enough to do without being diverted into that kind of tension in the committee.

Mr. Chairman: Thank you, Mr. Renwick. Mr. Newman.

Mr. W. Newman: Mr. Chairman I wasn't here this morning either due to a prior commitment. But I've read your statement over and I don't think you were quite so restrictive as maybe Mr. McCallum thought. But certainly, as far as I'm concerned, I think that you've been very fair throughout these hearings and I think if we are going to continue through and keep a fair atmosphere on both sides, or all sides here, that Mr. McCallum certainly should have a right to interject on important matters, and I don't think that you restricted him that much in the statements as I've read them in Hansard.

Mr. Chairman: I realize the evidence that was going to come forward this morning would be contrary in many respects, and I thought Mr. McCallum came in pretty strong right at the start, and it was a request that I made

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C.B.

(MR. Chairman)

to reserve it, and certainly I can't complain that Mr. McCallum didn't comply with my request. He perhaps complied to a greater extent than I had expected or asked for.

Any other comments?

Mr. Bullbrook: Yes, I want to ^{add a} voice in support of ~~you~~, as one member of this committee, that ~~Mr.~~ Mr. McCallum's attitude in connection with not in any way interjecting or asking any other question wasn't, I thought, receptive at all, or appropriate to what you've said. The record shows that you asked him, you used the phrase "unless you feel we are going off the track", ~~If~~ that isn't an invitation for him to continue, I want to say to you Mr. Chairman, that I don't think Mr. McCallum was justified in keeping silence unless he was the author of his own silence. Certainly you weren't, having regard to the remarks you made.

Mr. Chairman: Thank you one and all,
The committee adjourned at ^{6.27} ~~6.28~~ p.m.

H 1239 to follow

APPEARANCES

Committee members:

J.N. Allan
J.E. Bullbrook
I. Deans
M. Gaunt
L.C. Henderson
R.G. Hodgson
W. Hodgson
J.P. MacBeth (Chairman)
W. Newman
J.A. Renwick
G.W. Walker

Clerk of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Ontario Hydro counsel:

Pierre Genest, QC
James McCallum, QC

Canada Square counsel:

Douglas Laidlaw, QC
Elair Cowper-Smith

Vice-President, Y and R Properties Ltd.:

G.V. Tatham

#42

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Thursday, July 12, 1973

Morning session

1239-1267

THE ONTARIO LEGISLATURE - SELECT COMMITTEE

HYDRO HEADQUARTERS

H-1239-1

July 12, 1973
10.15-10.20 am
V.H.

The committee met at 10.15 a.m. in the Members' Board Room.

Mr. Chairman: Ladies and gentlemen, we are prepared to go. We have a quorum, so I do call the meeting to order.

Mr. Renwick: Mr. Chairman, if I may at the commencement recall the matter which was being discussed last night when we adjourned. I would like to put on the record the concern, as a matter of principle, which was being discussed. I recognize that there were personal tensions involved in the situation last night but there's a very fundamental principle involved and I want to make certain that we in this committee, as we move into the more contentious and difficult areas, understand what we must do.

I would like to refer, and I know my non-legal friends and my legal friends will bear with me very briefly. I would like to refer to Phipson's manual ^{"17X"} "Law of Evidence", eleventh edition, at the end of the chapter - at the commencement of his book states:

"The practice of holding an inquiry is not new, but is increasing, and though no rules of evidence are binding on the tribunal, nevertheless it will insist on some degree of relevance, and if specific charges are being investigated may apply the same rules as if a trial were proceeding."

I emphasize of course the words "may" and "that no rules of evidence are binding on the tribunal" and I would like to refer to what I am ~~x~~ certain the

Mr. R.G. Hodgson: Where is that from Mr. Renwick?

Mr. Renwick: Phipson's "Law of Evidence" in this manual, at page 7, which I think is one of the authoritative texts on the law of evidence. Then I would like to refer to Mr. McRuer's inquiry into Civil Rights in the Province of Ontario, particularly in Volume 1, pages 139 and 140. I would

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V.H.

(Mr. Renwick)

like to make this point, that the Royal Commission on Civil Rights did not apply to the Legislature or to any committee of the Legislature in its specific terms.

But the reference I want to quote is an historic reference to the comment of Lord Loreburn in Board of Education vs. Wright decided in the House of Lords in 1911 and which has been adopted and affirmed in the Supreme Court of Canada as late as 1953 in "Re Toronto Newspaper Guild, Local 87". The quotation is:

"Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of state the duty of deciding or determining questions of various kinds.*

"In the present instance, as in many others, what comes for determination is sometimes a matter to be settled by discretion involving no law. It will, I suppose, usually be an administrative kind but sometimes it will involve a matter of law as well as matter of fact or even depend upon matter of law alone.

"In such cases, the board of education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon everyone who decides anything but I do not think they are bound to treat such a question as though it were a ~~trial~~ ^{trial}, they have no power to administer oaths and need not examine witnesses, they can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view."

Now, having ended the ~~qu~~ quotation, I would like to make this comment. It is quite clear that this is not an administrative tribunal. It is quite clear that it is

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V.H.

(Mr. Renwick)

a select committee appointed by the Legislature of the Province of Ontario, but the point I think is perfectly clear, that if bodies created by acts of the Legislature of the Province of Ontario are required by law to adhere to the precepts set out by Lord Loreburn, then it seems to me that it is essential for a committee such as ourselves, from which for practical purposes there is no appeal or court protection, because I do not personally think until it is tested that a court would intervene to tell a select committee of the Legislature what to do in a particular circumstance. It seems to me that we as a committee must be vigilant to make certain that we are fair, because if we appoint, by statute, other bodies and they are bound by these ~~the~~ rules then a body such as ourselves, very much in a sense a law unto ourselves, subject always to the Legislative Assembly itself and subject always to the electoral ^{or} process, then the point, which I want to emphasize is that while we are proceeding in administering oaths and examining witnesses, ~~the program of a simple statement by Lord Loreburn is that "I need not add that in doing either"~~

H-1240 follows

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fvk

(Mr. Renwick)

~~... proceed in, and administering and ensuring witnesses,~~

the very succinct, simple statement by Lord Loreburn that: "I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon everyone who decides anything" ~~is~~ is, I think, very appropriate for the kind of problem that we're faced with in this inquiry, ~~and~~ I would like again to quote the last part of that quotation: "They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement ~~and~~ prejudicial to their view."

I emphasize that, in order to head off any problem in this committee, I think my suggestion to the chairman that he and counsel meet with counsel for Hydro, ^(counsel for) ~~and any other interested parties~~ to establish, in an informal way, the procedure to be followed is most important so that everyone be satisfied that we are acting fairly. I thought, Mr. Chairman, ^I ~~we~~ should draw that to the attention of the committee to express my views on the matter this morning.

Mr. Chairman: Thanks, Mr. Renwick. That's helpful, I'm sure, to the chairman and to all counsels here.

Mr. R.G. Hodgson: Mr. Chairman, may I make ~~an~~ a comment on this?

Mr. Chairman: You certainly may, Glen.

Mr. R.G. Hodgson: I certainly would like to associate myself with Mr. Renwick's remarks, first of all, with the understanding that we operate basically from the ~~press~~ precedence, practices and procedures, ~~first of all, of~~ Great Britain rather than ~~from~~ ^{of} Ottawa, as a practice of our House, ~~and~~ therefore, it takes precedence in my mind over any decision on that by any Canadian authority.

Mr. Chairman: Thank you, sir. I was going on to say that Mr. Shibley and I did meet with Mr. McCallum this morning but you enlarged it last night, to mention others, and you reminded

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fvk

(Mr. Chairman)

me this morning that you'd included others as well. The only one we spoke to this ~~morning~~ morning was Mr. McCallum. I think we haven't had too much trouble in the past. Yesterday was the first day it arose and it was a request that we should limit counsel's interruptions so that we might have a continuous story but ^{that,} at the same time, the representations from other counsel would certainly be listened to sometime. If they are germane, and damage is going to be done, I think it is quite in order that they should be made at that time. I'm just asking counsel to restrain themselves.

I thought Mr. McCallum needed a little restraint yesterday and then when I asked him to restrain himself he went overboard. These things are difficult. We certainly ~~think~~ have been fair, I think. We ~~would~~ ^{are} certainly ^{trying} to be fair and we will continue, I'm sure all of us ^{to} ~~will~~ attempt to be fair.

Mr. Renwick: Mr. Chairman, if I may make ~~just~~ one sort of addenda. I think the informality of our proceedings does not alter the importance of the proceedings. I think the informality is a very important part of what we're about and I know very well that all things cannot be done seriatim. ~~There~~ There are occasions when an interjection by counsel, or a request for a particular question to be put, or a matter to be clarified at the specific time that evidence is being given is a much more appropriate ¹ ~~matter~~ ^{to} deal with ^t some later date of recall, which is not appropriate because the atmosphere, and the impressions at the particular moment, have faded and have been dispelled, ~~so~~ I think ~~is~~ informality, good sense, ^o ~~relaxed~~ atmosphere is the best way in which we can carry on with what we're trying to do.

Mr. Chairman: Thank you, sir.

Mr. W. Newman: Mr. Chairman, you used the word restraint again this morning. I ~~just~~ wanted to make it very clear that ~~these~~ the ^{other} ~~opposition~~ lawyers have a right ^{to} ~~to~~ interject ~~if~~ if they feel it is very pertinent to the matter.

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Mr. Chairman: That's right. Mr. Shibley.

Mr. Shibley: I'd like to say something about this topic and make it clear to the committee that there are two aspects of the question of communication with other counsel. I think it's fair to say that there has been continuing, and close co-operation, and communication, between counsel for Hydro and other counsel but particularly between counsel for Hydro and myself from almost day one.



(Tape H-1241 follows)

H 1241-1

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(Mr. Shibley)

~~in counsel for Hydro and myself from almost day one, and~~
that apart from the actual occasion of the witnesses giving their evidence, Hydro has received from me prior notification of who would be the witnesses to follow, and in fact, I have acceded from time to time to suggestions made by them as to a better order of witnesses. They have been alerted in advance to the areas of evidence that I intended to review with any witness from Hydro. I have, I believe, and I think Mr. McCallum would confirm that to the extent that I have been examining witnesses of Hydro, almost gone overboard myself in attempting to avoid any surprise ~~and~~ and to forewarn them of the areas about which I intended to conduct examination to permit them, as I felt it was proper to do, to ~~now~~ prepare for any answer they wished to give; and I would think that counsel for Hydro would confirm that they have had all such opportunity, and I in return would like to confirm that they have been completely cooperative with me in respect of any requests I have made of them.

With respect to the time of giving evidence, the difficulty is one of trying to have the witness give his evidence with continuity and without interruptions that are not essential to the purposes you have so well expressed, Mr. Renwick, and I couldn't agree more with the basic tenets of the statements you have made as to the need for fairness and as to the need for contemporaneous statement or interruption referable to anything which may be distorted without contemporaneous comment, and really that is what I had in mind when I invited Mr. McCallum to say what he might have to say last evening. I thought there might be something in his mind which was in contradiction to the evidence at that point that he wanted to

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(Mr. Shibley)

make a matter of a record. It is still, nevertheless, a circumstance where if a question is put to the witness which is difficult for the party affected by the answer and that circumstance alone is the reason for an interruption, then I think the Chairman very properly puts a halt to that type of interruption. It is what I call throwing a block, and when that happens I think the Chairman should not hesitate to make it clear to counsel, and I don't think this committee's opportunity to receive evidence should be interfered with by that kind of effort. Now I am not, by making that observation, suggesting that that was Mr. McCallum's purpose yesterday, but that could happen and I think we have got to be careful not to let it happen because it is a trial tactic and it is one I certainly recognize as being employed in trials from time to time, or interruptions which tend to throw a witness off his track, so to speak. He is on a certain narrative, he has certain things in juxtaposition in his thinking, and an interruption for any reason, at that particular time, could as I say, get him off the track and prevent the witness giving the kind of evidence that might be useful. Now, I think what should be done is this; that counsel should wait until the witness has completed his evidence on a particular subject or even complete his statement of evidence if it is a statement per se that wants to be contradicted, but not jump into the middle of a narrative with the collateral consequences that I am very fearful about. I have suggested, and Mr. McCallum and I have agreed this morning, that perhaps what with recesses being held at intervals of about an hour and a half; we have an hour and a half of hearings and then a recess, that these recesses should be the opportunity for any counsel to come to me. ~~I must say~~
~~counsel for Mr. McCallum and counsel for~~

✓ Tape 1242 follows

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(Mr. Shibley)

~~...that the ...~~
~~...to come to me ...~~ I must say, counsel for Mr. Moog and counsel for others have, in the past, used that opportunity to come to me ~~and~~ I got some questions this morning to follow through immediately and I have made the practice of ~~not~~ interrupting my own questioning to put those questions to the witness, without ~~any~~ delay.

~~...I~~ I think we have sorted that out. I agree with you that if a matter which is important and which is truly a matter requiring immediate and contemporaneous comment or questioning arises, that should be the occasion for an interruption.

But, if the matter is such that it could wait for the next half an hour until a recess, then it would greatly expedite and, I think, assist, not only the committee but the witnesses, who are being examined.

So that, I think, we have attempted to be ~~fair~~ and I think we have, in fact, been fair to this point. As I say, I have not — if anything, I've opened my brief, so to speak, to other parties affected and I've done this for everyone.

The kind of evidence you've heard is the result of examination in the face of firewarning, if you like. I haven't gone into the evidence of witnesses of one party with counsel for another. There's a limit to how much information I can disseminate. But to the extent of counsel for a given party being able to anticipate what's coming at his client, or when the party involved has no counsel, I've made no secret of the fact that I'm alerting them to the areas that I intend to question them. ~~on~~

If you've got any documents that help you explain this or help you develop your answer, dig them out and if you want to show it to the committee, it is filed in your record of information, you should do so.

So, I don't think there's any element of surprise involved. That's all right.

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(Mr. Shibley)

Well, Mr. Chairman

Mr. Chairman: Yes, Mr. Shibley.

Mr. Shibley: ~~Yes~~ I'd like to go on then with this witness, appropos of what we've been talking about, I have a few questions to go over with you, Mr. Tatham, that ~~eminate~~ from requests by counsel for Canada Square.

Yesterday, we were talking about the risks attendant upon leasing a building and that part of the cost involved is the cost of an allowance for tenant's improvements. You had given evidence that the current allowance is some \$2 per square foot. Do you remember that testimony?

Mr. Tatham: Yes. Of course, this varies

Mr. Shibley: Yes, it varies. Now, then, I've been asked to put this to you; ~~yes~~ with respect to this transaction, would not the rental rate reflect the fact that the developer need not make any such allowance?

Mr. Tatham: Yes.

Mr. Shibley: Yes. ~~And~~ So that I'm taking it that when counsel for Canada Square asked me to put this question to you implicit in that is that when Canada Square, therefore, made its proposal, it reduced its rental rate because it was alert to the circumstance that it need not make these ~~allowances~~ allowances.

Mr. Tatham: Well, I wouldn't make that assumption because / ~~I know we certainly didn't~~

Mr. Shibley: Yes. And similarly with respect to the other elements of risk which were not attendant upon this transaction, they would also be reflected in the rate which was being proposed by any developer?

Mr. Tatham: Yes

Mr. Shibley: Now, then, the other question about which I've been ~~asked~~ asked to deal with you on is the question of the effect of stipulating ~~for~~ a \$34 per square foot building, upon the risk confronting the developer. ~~and~~ I had been asking you H-1243 to follow

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H - 1243 - 1

(Mr. Shibley)

~~I had been asking~~ about whether the pegging of \$34 as a value figure reduced the risk to the developer, and I have been asked to put this question to you, if the amount of profit in the proposal of a developer is the same as for a \$30 building, and as for a \$34 building, is not the risk to the builder greater with respect to a \$34 per square foot building?

Mr. Tatham: Well as you recall, I had some difficulty in answering that question because I did not fully comprehend the question.

My answer remains the same on the assumption that my interpretation of the question was correct. You were using some very significant words. You said a value of \$34, you did not say a cost of \$34. Now, if it is a value of \$34 and it is a cost of something less than that figure, then the risk is less, as I stated. If it is a cost of \$34, as opposed to a cost of \$30, then the risk is somewhat higher for no other reason than the fact that there are more dollars invested and in the event of a strike the interim financing costs would run and would, of course, cost more money.

Mr. Shibley: Mr. Tatham, I understand that. Is the whole of your response, however, predicated upon the amount of profit being a constant factor as for a building valued at or costing \$30 or \$34?

Mr. Tatham: Well one is conceiving a building, and when one is building one is building. These are the best judgments of the people who are involved at the time. What subsequently ensues is another ball game.

If, when you go out to competitive tender, you haven't hit the marketplace at the right time, and the marketplace is extremely competitive, the prices can come in lower than your estimate. Conversely, if you have hit the marketplace wrong, ~~and~~ *and* your judgments have been wrong, if it is not as competitive, the prices can come in higher. This is part and parcel of the risks

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(Mr. Tatham)

that a developer runs and it is an educated guess based upon his wisdom and his expertise what he is prepared to go on the line with.

Mr. Shibley: Well I still don't know that the record is clear in the area in question. Let us say that the developer decides to realize a \$1 million profit on a building, on this building, and the building is to cost \$30 per square foot. His risk, in respect of that building, is less than if the building is to cost \$34 per foot?

Mr. Tatham: Yes, because expressed as a percentage, the \$1 million is ~~na~~ a higher factor.

Mr. Shibley: Right. And he has less margin ~~for~~ error, rateable to the overall cost of the building, is that correct?

Mr. Tatham: On the more expensive building he would have less ~~margin~~ ^{margin} for error.

Mr. Shibley: Now on the other hand, if he expects to make \$1 million on the \$30 ~~million~~ building, but \$2 million on the \$34 building, then the variable in the profit element would affect his risk?

Mr. Tatham: That is the way I construed your question. I worked on the assumption that there was a bigger contingency, or greater profit, and therefore the risk was less.

Mr. Shibley: Right. So it all depends really upon whether there is more profit built into the transaction at \$34 per square foot, or whether the profit is a constant. Is that right?

Mr. Tatham: Yes.

Tape H - 1244 follows

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10.40 - 10.45 am

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AA

~~(M)~~

~~Mr. Shibley: Is this a permanent or a temporary arrangement?~~

~~Mr. Shibley: Yes.~~

Mr. Shibley: All right. Now, Mr. Tatham, I should refer you again to page one of schedule (c) in the contract documents ^{it's} wherein you will see, when you receive ^a break-out of the area of the building under construction by Canada Square.

You'll notice, Mr. Tatham, ~~←~~.

Mr. Bullbrook: Mr. Shibley, would you help me? Schedule (c)?

Mr. Shibley: Yes. Mr. Bell will locate it for you. The building you were ~~estimating~~ ^{with} and making a proposal for was a building ~~with~~ ^{one} million net rentable square feet. Is that correct?

Mr. Tatham: Yes.

Mr. Shibley: I would like you to compare that area with the area in Schedule (c); the break-out of the areas in Schedule (c).

Mr. Tatham: Well, based on an initial cursory look, it appears to me that ~~this~~ ^{had} this building is larger than the building we ~~are~~ ^{had} under contemplation.

Mr. Shibley: In terms of rentable square feet, how much larger?

Mr. Tatham: Well, this doesn't - unless there is something here I am not reading, this is not making reference to rentable feet, this is making reference to gross square feet ~~and~~ ^{is} the fastest way I can get a relation-ship by looking at this ^{is} that it would appear to me that if you deduct the lower concourse of the 103,000 feet ~~we~~ are talking in round figures, a building above grade of about a 1.2 million ~~and~~ ^{is} we were proposing 1.1 million above ~~grade~~ ^{is} out of which about one million square ~~feet~~ ^{is}

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AA

(Mr. Tatham)

was rentable. I don't know what the efficiency of this building is. I do not know what the rented area of the building is.

Mr. Shibley: You ~~are~~^{were} proposing a building of 1.1 million gross, with one million net ~~→~~

Mr. Tatham: Above grade.

Mr. Shibley: Yes, above grade. And this appears to be a building of 1.2 million above grade and ~~→~~

Mr. Tatham: With some unknown to me, rentable.

Mr. Shibley: Yes, 1.2 million would be gross, so that this would be somewhat ~~in~~^{less} in any event, in net rentable area. Is that correct?

Mr. Tatham: Yes.

Mr. Shibley: Yes. Perhaps the people from Canada Square can be more precise as to that. I know that it is ~~variable~~^a from the report provided by Mr. McCallum that I will not refer to at this time. But what I am interested in ~~establishing~~^{is}, Mr. Tatham ~~is~~ in terms of a variance of, say, 10 per cent or 20 per cent, in the net rentable area to be created for this development, would there be a ~~ratable~~^{rateable} increase in the cost of construction as determined by your calculations?

Mr. Tatham: Well, again, to make sure that I ~~understand~~ understand that we are communicating, a larger building understandably costs more.

Mr. Shibley: Sure.

Mr. Tatham: If you are asking, does it cost more per rented square foot, which is the true judgement, ~~and~~ and there is no way that I can, sitting here, compare these two buildings. I don't know anything about this building. But the larger building would cost more money and, arbitrarily,

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AA

(Mr. Tatham)

I would say that if this building was 100,000 ~~444~~ square foot greater than ours, above grade and ~~again~~, talking in round figures, say it is of the order of a million plus square ~~444~~ feet, it's 10 per cent larger; therefore, all things being equal, if our building were ~~10~~ 10 per cent bigger, it would cost approximately 10 per cent more dollars.

Mr. Shibley: Yes.

Mr. Tatham: The effective ^{rental} ~~rate~~ per square foot, however, would not change.

~~Mr. Shibley: I am only interested in at the~~

H XZHA1245 - 1 follows

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M.R.

(Mr. Tatham)

~~the effective rental rate per square foot however would not change.~~

Mr. Shibley: I'm only interested *at the moment*

Mr. Tatham: *For a subject* ~~again, please~~ *give me*

tolerance, and I'm talking off the top of my head.

Mr. Shibley: Yesterday you indicated that the building for which you made a presentation with a net rentable area of one million square feet was estimated by you to cost, in the overall, \$30 million inclusive of design, interim financing and the ...

Mr. Tatham: That was the one on the Eaton's site?

Mr. Shibley: Yes.

Mr. Tatham: Yes.

Mr. Shibley: And then with respect to the building on the Hydro site ...

Mr. Tatham: It cost less because there ~~was~~ *is* a significantly smaller garage area.

Mr. Shibley: All right. Now, then, adopting the larger figure of \$30 million for the moment; if you had been required to enlarge upon that structure, let's say by an additional 200,000 rentable feet, can this committee safely take it as a proper rule of thumb that you would then have expected the cost of the structure to be 20 per cent more, namely, \$36 million?

Mr. Tatham: Well, the answer to that in the overall, *but* it's an extreme simplification, is yes.

Mr. Shibley: Yes.

Mr. Tatham: But you must consider that every building has its limitation, every site has its limitation, so that there are constraints that are forced upon a given building's design.

And, therefore, you have to be very careful in just - you know, extrapolating in that fashion. In other words, it may not have been possible to build a building

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(Mr. Tatham)

20 per cent bigger and still retain the aesthetic amenities and the efficiency factor. I mean, this is a whole study and you ...

Mr. Shibley: Well, Mr. Tatham, perhaps I should put it in context for you and members of the committee.

My understanding is that the building under construction by Canada Square is expected to cost in the order of \$44,400,000. Now you have said that you estimated the cost of the structure at the Eaton's site, which was to be the more expensive building, at \$30 million in the overall.

I'm concerned to know whether - that we recognize any factors which might bridge those two figures, the figure of \$30 million, that you provided us with and the figure of \$44,400,000, which is projected to be the cost of this structure.

Now, one of the ~~the~~ elements appears to be a somewhat enlarged building and so I'm anxious to know from you if this building is ten per cent larger or if you had been asked to build ~~the~~ your building to a net rentable square footage of one million one, would you then expect, with variables, that it would cost approximately \$33 million or if it was an extra 200,000 that it would cost \$36 million?

Mr. Tatham: The answer to that is yes

Mr. Shibley: Yes. And unless and until you get into some extreme variances, such as making the building into a high rise or some other dramatic change in the basic design and so on, we could safely, I gather, proceed on the footing that if you had been asked to enlarge the building in that limited manner, the difference in overall cost of construction ~~and~~ would be ratable to the increased net rentable area.

Mr. Tatham: Yes, assuming a design solution that would accept all the ~~basic design~~ ^{principles} could be found

~~Mr.~~

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Mr. Shibley: All right. Now, then, one thing occurred to me last night, Mr. Tatham, when I was asking you about the ability to proceed immediately on the Eaton's site, you told us that you had cleared this with Eaton's that you could make this approach to Hydro and without getting into detail and without knowing what the status of the overall circumstance of the Eaton re-development scheme amounted to, was the situation such and did it continue to be such that you could have gone ahead with this building at the - on the Bay Street site, without waiting for city council - ~~It was about~~
~~about~~

M*2* H-1246 to follow

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V.H.

(Mr. Shibley)

~~that you could have gone ahead with the building on the~~
~~Bay Street site without waiting for city council.~~ I am
talking about Metropolitan Toronto city council - approving
the matter of the whole of the Eaton development?

Mr. Tatham: Well, there is nothing about the
building that was conceived and the solution that was
conceived that was in conflict with the building codes
and the zoning regulations that are applicable to the
city of Toronto, so I would assume that the answer to that
is yes.

Mr. Shibley: I see. So that it wasn't a building
which ...

Mr. Tatham: We had a letter of intent with Eaton's.
We had an exchange and they were aware of what we were doing.

Mr. Shibley: What I am concerned to make clear,
Mr. Tatham, is this. I would like to know whether - let us
say that Hydro had said, yes we will go ahead with the
building on the Eaton's site, could you have been underway
with that building at this time?

Mr. Tatham: Yes.

Mr. Shibley: All right. And I gather it ~~was~~ fell
within ~~the~~ as you say the limits of coverage, etc., appli-
cable to that site?

Mr. Tatham: Yes. It did not in any way conflict
with them.

Mr. Shibley: You also made mention earlier today
of a difference between value and cost. What did you mean?
What is your understanding of those two terms?

Mr. Tatham: My understanding of the terms?

Mr. Shibley: Yes.

Mr. Tatham: The whole skill of development is to
come forward with a solution which in real estate terms is
the highest and best use of a given parcel of land. The
highest and best use is ascertained by a number of ingredients,

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(Mr. Tatham)

and these ingredients are not only the building that is created thereon but also the ~~concept~~ ^{TENANCY}. Therefore, when land, a creative building solution and full tenancy list can be achieved, this creates an economic value. That economic value determines the amount of money that can be borrowed for any given venture and the amount of money that can be borrowed is not necessarily directly related to its costs. Its more directly related to the entire package by that I mean the land, the building, the lease, the covenant, the tenancy - everything that makes value in the sense of the development process. If the job is well done, the value is of course greater than the cost otherwise there is no profit and there is no point in the exercise.

Mr. Shibley: Yes.

Mr. Bullbrook: I was diverted just for a moment unfortunately and I didn't know whether in the response the witness had covered what I had in mind. Would you mind asking Mr. Tatham, is the financial quality of the tenant, does it effect the ultimate value?

Mr. Shibley: Mr. Tatham would you care to answer that?

Mr. Tatham: The answer to that is significantly if the tenant has no covenant, you can't borrow any money.

Mr. Shibley: All right. I have no further questions, Mr. Chairman.

Mr. Chairman: Any other member of the committee any questions?

Mr. Deans: Mr. Chairman.

Mr. Chairman: Mr. Gaunt I think?

Mr. Deans: I'm sorry. Please go ahead.

Mr. Gaunt: Well, Mr. Chairman, I would like to ask Mr. Tatham a few questions. First of all, Mr. Tatham, I think it's fair to say that during the course of the evidence so far,

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(Mr. Gaunt)

it has been indicated that Hydro was looking for a building
of quality. I think the way it was put and



H-1247 follows

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M.F.

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(Mr. Gaunt)

~~for a building of quality. I think the way it was put, and~~

perhaps put most aptly, was that they were looking for a Buick not a Datsun.

Now first of all, against that background, is your company noted for building Datsuns or Buicks?

Mr. Tatham: Our company is noted for building Buicks at Datsun prices.

Mr. Deans: You are under oath.

Mr. Tatham: I appreciate I am under oath.

Mr. Gaunt: I can understand that because, based on your political donations, it would have to be on the basis of quality I would have to say. I am wondering -----

Mr. Tatham: We are politically naive.

Mr. Gaunt: How does Y and R compare with other developers, let us say, in Canada, are you rated in the top three or four?

Mr. Tatham: You ~~must~~ must get Y and R into perspective.

Y and R is the successor company to the Yollies and Rotenberg group ^{of} companies. Now the Yollies and Rotenberg families were pre-eminent, they were the developers in the city of Toronto in the period of the 1920s. This pretty well carried out through the 1930s and in the course of the 1940s we built, I think I mentioned yesterday, the British-American Oil building which was the first major ^{in the} not major by today's standards - but at that point in time it was the first major office building built in the immediate post-war period. The rental rate was \$2.50 per square foot and we mortgaged out, we gave the money back to the mortgage company, we don't do that today if we are able to. ~~-----~~

Mr. Shibley: Would you explain that please? I don't know that what you have just said is perfectly clear. I want you to explain that.

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Mr. Tatham: That is the relationship of value versus cost.

Mr. Shibley: What you are telling the committee though, that is in respect to that building, you had arranged for borrowings in an amount which turned out to exceed the cost of the construction of the building and you returned the excess?

Mr. Tatham: Yes. You can't do that today, it is much more difficult.

Mr. Shibley: To return money?

Mr. Tatham: It is still the object of the exercise.

~~Mr. Shibley~~ I am sorry, Mr. Gaunt, I have got off the thrust of your questions.

Mr. Shibley: Well I have done to you what I have accused others of doing.

Mr. Gaunt: Just on that point, then, is it my understanding then that that means that you have got to be very precise in your requirements for money? Is that the interpretation?

Mr. Tatham: Well the ... no, the ---- you have to be ---

Mr. Deans: Or over estimate?

Mr. Tatham: Listen, there are many bankrupt developers.

Mr. Deans: They are not here today though.

Mr. Tatham: That is right. This is a very scientific, very highly skilled, occupation and developers are much maligned and I take exception to some of the reference.

Mr. Deans: Made by whom?

Mr. Tatham: I am not saying this committee, no. The press I am talking about. The developers earn the right to a deal great ~~and~~ more respect than they receive by some of the press in my opinion.

I am sorry, Mr. Gaunt, would you rephrase your question?

Mr. Shibley: ~~You were talking~~ Mr. Tatham, I think Mr. Deans was asking about how Yolles Rotenberg ranked in Canada and you had ~~gone~~ started on it. It was Mr. Gaunt, yes.

Mr. Tatham: I am sorry, I got off the topic. I started to say -----

~~Mr. Gaunt: I am wondering before we move into that area~~

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PLG

~~(Mr. Tatham)~~

~~I started to say I am sorry, that was Mr. Gaunt's question~~

Mr. Gaunt: I am just wondering, before we move into that area again, I wonder could I clarify the point raised by Mr. Shibley in his question? I am not sure that I get the import of that.

Mr. Shibley: I will take Mr. Tatham through it. You were mentioning that in the 40s you built what was then the first major building, being the British American Oil

Mr. Tatham: The British American Oil head office building.

Mr. Shibley: Yes. And in respect to that building, financing was -- what was the basis of that arrangement? Just generally.

Mr. Tatham: It was quite a conventional arrangement. Eatons owned the site. We made arrangements to purchase the site ^{from} ~~off~~ Eatons and we conceived a building thereon. This was marketed to the British American Oil Company based on a 20-year lease in which they had options to purchase by virtue of the land; by virtue of the building that was conceived thereon; by virtue of the covenant of the lease we were able to enter into a financial understanding. By virtue of that financial understanding it turned out, in fact, that the land and building cost less money than the money that was borrowed and as a consequence the ~~money~~ ^{excess} money was returned at that time. As I said we have learned better since but we haven't been able to do it too often since, and that is the development process.

Mr. Shibley: Yes. In other words, by reason of efficiencies of your method of dealing, the developer process, you were actually able to develop that site at less money than was funded for it ~~and~~ initially.

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PLG

Mr. Tatham: And that the lending institutions at that time and in that day were prepared to lend, based on the covenant of ourselves and the British American Oil Company.

Mr. Shibley: Yes, ~~and~~ of course, ~~again~~ again, just bringing that into perspective, vis-à-vis this project, is the circumstance of Hydro's ~~current~~ covenant such that -- I am sorry; I am talking about its covenant in the lease -- such that the full amount of the projected cost of this building under this contract, that amounts to ~~the amount of~~ \$44,400,000, ~~that~~ could be borrowed?

Mr. Tatham: I would think that the answer to that is yes.

Mr. Shibley: And through efficiencies emanating from the developer process, there is the contingency that the building will not cost that ~~same~~ amount?

Mr. Tatham: Well, I wouldn't -- certainly in our case I would -- we had contemplated that with that covenant we could finance out, ~~that~~

Mr. Shibley: ^{Yes} ~~and~~ I tell you, members of the committee, I reminded you, ~~at least~~ at least, that there is provision under the Canada Square agreement with Hydro, that should the building cost less than \$44,400,000, there is to be a sharing in that differential.

Mr. Deans: That is ~~x~~ what I wanted to ask ~~x~~ about.

Mr. Tatham: Ask me about? I have no knowledge of it.

Mr. Deans: Did you want to ask the same thing?

Mr. Chairman: ^{The next is} ~~Mr. Gaunt~~ and you will be on ~~next~~ next.

Mr. Deans.

Mr. Gaunt: Well, just to take the transposing exercise further and apply it to this particular building, in the event that

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PLG

(Mr. Gaunt)

you were able to, let us say, your company was able to develop this building for less than \$44,400,000 and you had borrowed that money on long-term financing, what effect, then, does the arrangement whereby you share the saving with Hydro have with respect to the total amount ~~a~~ that you have borrowed?

~~Mr. Yabum: I am sorry, I can't answer that Mr.~~

~~Gaunt because~~

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fvk

~~(Mr. Gaunt)~~

~~.....with respect to the total amount that you have borrowed.~~

Mr. Tatham: I'm sorry. I can't answer that, Mr. Gaunt, because I'm not at all conversant with that contract or ~~xxx~~ what the intent is, or how it is. That was not a proposal that we made. We didn't ~~we~~ have a rebate arrangement in our proposal so I can't really answer the question.

Mr. Shibley: I think we'll have to ask Mr. Moog if -

Mr. Chairman: Mr. Gaunt.

Mr. Shibley: I'm sorry.

Mr. Gaunt: If I may return to the matter of Y and R's position in the -

Mr. Tatham: Y and R's position in the industry - I started to recount the fact that we were a group of private companies. It was the habit at the time, every time we created a new building that this new building would be owned and held by a separate company, ~~xxxxxx~~ a privately owned company, and the shares of that company would be shared on a 50-50 basis with the Yolles Rotenberg, and ~~Rotenberg~~ families and this would go into relative holdings companies so that every time we built a building we would have a new company. Subsequently, as Mr. ~~Mr~~ Yolles matured in years, his motivation, and his drive, reduced. I used to sit across the desk from him and try and encourage him to enter into some new understanding and he said: "What for? Can I eat any better? Can I sleep any better?" Obviously, the answer to that is "no" ^b So it developed that in 1968-1969 the the Yolles and Rotenberg families were sold to a group led by Mr. Rotenberg and we, subsequently in 1969, became a public company. So Y and R Properties Limited is now a public real estate company. Since that point in time, our rate of growth has been considerably greater. We're far more aggressive now than we were in the latter years as Mr. Yolles ~~a~~ was maturing in years. So, at this moment in time, I manage some ~~xxxx~~ two million rentable feet of office space in 10 buildings. We intend to double that size ~~a~~ in the course of the next four years. ~~xxxxxx~~ I just LEFT

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(Mr. Tatham)

a design meeting this morning for a major new building that we have been selected to build.

Mr. Gaunt: Is that in Toronto?

Mr. Tatham: Yes. We have a number of others under way.

Mr. Gaunt: So that in Toronto you actually operate, and manage some two million square feet?

Mr. Tatham: Currently, yes.

Mr. Gaunt: ~~Is~~ Is it a fair statement to say that your company is very strong on the operations on ^{the} management side, maintenance side?

Mr. Tatham: In my view, yes.

Mr. Gaunt: What were you offering for \$1.35? What performance specifications had you included in that maintenance rate?

Mr. Tatham: That would be our standard performance specification and I'm prepared to take you at any time through any of our buildings.

Mr. Gaunt: Just to understand you, the -

Mr. Tatham: It's a very high standard of cleaning. The windows are clean. The floors ~~are~~ clean. Everything is dusted. The waste ~~is~~ papers removed. It's a very ~~high~~ high standard of cleaning.

Mr. Gaunt: As far as you're concerned, you have your qualitative, own ~~quality~~ programme as far as ~~main~~ maintenance is concerned?

Mr. Tatham: Yes. We were not called upon. The nature of this specification was such that there was no detailed spec associated with the cleaning standard. This is not unusual and it can be produced. It was not part and parcel of our submission. It is not unusual, however, whereby you commit yourself to cleaning the windows once a month or whatever the standard is that is looked upon.

Mr. Gaunt: But as far as ~~you~~ you're concerned, given the fact that there were no such specs you were prepared to go

~~on your own~~

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(Mr. Gaunt)

~~represent~~, you were prepared to go on your record and see that the building was maintained at the highest possible standard?

Mr. Tatham: It proved to be very much in our interest to do so.

Mr. Gaunt: I just wanted to follow up on another point that was raised yesterday and I just want to make sure that I understand the comment which you made at that time. I understand that you said yesterday that you had no knowledge that Hydro was prepared to take the risk of the foreign exchange at the time you submitted your proposal.

Mr. Tatham: That's correct.

Mr. Gaunt: Would that very important, what I would consider very important, piece of information normally be given at the time the proposal specs were outlined or would that be in the normal course a subject for negotiation after the decision had been made with respect to what developer was going to do the job?

Mr. Tatham: Now, when you say normally, I don't know that there is necessarily a norm. I have tried to indicate that there are many different approaches that are taken to the development process but, in one recent undertaking, it was specified that the money had to be in Canadian ^{funds} ~~cash~~. Certainly of late, it has been that if someone has been prepared to take the foreign exchange risk, you can borrow money in American dollars at less interest than in Canadian dollars and, of course, the interest is a very, very important part of the rental dollar.

Mr. Gaunt: All right. So that particular piece of information would be very material to the pricing which you would do?

Mr. Tatham: Yes. For example, if instead of using eight and three-eighths per cent money, the money - and I don't know what it was at the time, but if you could borrow in American funds at seven and seven-eighths for example, that would be a material difference.

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V.H.

Mr. Shibley: Provided that the tenant was prepared to assume the risk of exchange rate fluctuation?

Mr. Tatham: Yes. Well, we wouldn't. I mean.

Mr. Shibley: No. But that's got to ^{be} the basis upon which it was material to the developer that the lessee would assume that risk.

Mr. Tatham: Yes.

Mr. Shibley: If you were required to assume the risk,

Mr. Tatham: Well, up to this point in time, we have done it. I understand it was done in the 1930s by our firm.

Mr. Gaunt: So that when you made your proposal at the interest rate of eight and three-eighths per cent, Canadian funds, of course, you were doing that on the basis that there would be no exchange rate of course with Canadian funds.

Mr. Tatham: That's right.

Mr. Gaunt: Had you known at that time that the lessee was prepared to assume that foreign exchange rate, would it then have been to your advantage to seek out foreign funds?

Mr. Tatham: Well it would ^{be} based on the assumption at that point in time that foreign funds could be borrowed at - in the amount necessary and at lesser interest rate, the ~~can~~ rental rate we would have been able to quote would have been less and therefore hopefully you would be able to make a more attractive presentation and perhaps end up having a deal.

Mr. Shibley: Excuse me, Mr. Gaunt. Were you ever made aware by Hydro that they were prepared to assume the risk of foreign exchange?

Mr. Tatham: I have already answered that question, Mr. Shibley, and the answer is no.

Mr. Gaunt: There's just one other matter ~~that~~ that I want to deal with Mr. ~~TAM~~ Tatham and that's the matter that

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(Mr. Gaunt)

relates or flows from Mr. Candy's evidence as seen on page H-436-3 under date of Wednesday, June 13, morning session.

Mr. Candy says:

"Canada Square have certain patents on doing things. One is their VVR system of air conditioning which is a built-in system in their curtain wall. They have other patents on elevator doors and things. They feel that they can do things at less money than other people can do because of certain patents which they have paid for."

Now I just want to ask you, are you aware of those patents?

~~Mr. Candy: The answer to that is, it is an aware~~
~~of the~~

H-1251 follows

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AA

~~(Mr. Gaunt)~~

~~Are you aware of these patents?~~

Mr. Tatham: The answer to that is no. I am aware of the variable air volume system of air conditioning. We introduced this ~~the~~ system in the IBM computing centre building, ~~to~~ which I have referred before. I have known and worked with Bob Tamblyn ever ~~since~~ since he went into business as a professional consultant ~~and~~ Bob had some ideas relative to being able to improve the quality of air conditioning and reduce the cost. ~~We~~ We lent to him, and ~~cooperated~~ ^{cooperated} with him, sections of our IBM computing centre building, in which these tests were made. ~~We~~ We worked with him for a period of some numbers of months. ~~so~~ I don't know what the nature of the patent is, but Mr. Tamblyn is an eminent designer, with whom ^(Bob worked) we ~~worked~~ very closely and intimately for years.

Mr. Gaunt: The matter was sparked in my mind ~~because~~ ^{that} because of the fact I understand in your proposal ~~you~~ you were going to use Tamblyn, Mitchell and Partners as your mechanical people in the construction of your building, were you not?

Mr. Tatham: Yes, and we were going to use a very high quality air conditioning system, in accordance with some very precise specifications which were laid down, ~~we~~ ^{we} and ~~they~~ were prepared to guarantee them.

Mr. Gaunt: And Canada Square, I ~~believe~~ believe, is also using Tamblyn, Mitchell and Partners as ~~their~~ ^{its} mechanical engineers in the construction of ~~their~~ ^{its} building?

/- Mr. Tatham: Yes.

Mr. Gaunt: So that any such patents referred to here would be developed by whom? By Tamblyn?

Mr. Tatham: Well, again, I am at a bit of a disadvantage because I don't have knowledge of these patents, but I do know that I have worked with Bob Tamblyn for years. ~~For~~

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AA

(Mr. Tatham)

example, I was a representative on the special task force on smoke control in high-rise buildings at the National Research Council in Ottawa where I have attended meetings, on and off now, for the period of ~~2~~ 2-1/2 years. The ~~consultants~~ consultants that we used to prepare the brief that we submitted ~~by~~ by we I mean BOMA, Building Owners and Managers Association, which got me on to that committee. We used Bob Tambllyn as the mechanical design consultant, So that he is one of the forerunners in the mechanical design profession that we have in Canada, in my view.

Mr. Gaunt: Normally, would such patents be produced internally by a developer?

Mr. Tatham: Well, certainly, if a developer has a creative idea and it is sufficiently original, that he is able to patent it. I am not completely conversant with the patent law, but I do know we have some tenants who are solicitors who have ~~an~~ ^{their} entire occupation in creating patents. So that again, without ~~having~~ having full ~~knowledge~~ knowledge of what those patents are and to what they apply, I can't intelligently ~~answer~~ answer your question. I am sorry, Mr. Gaunt.

Mr. Gaunt: Well, perhaps I shouldn't pursue it, but there is just one matter that bothers me on this, and that's the fact that, for instance, if a developer did develop a patent internally within his company, would he in turn be able to allow the use of that patent by another company in the construction of a building which he had been successful in bidding upon?

Mr. Tatham: Well, again, I am speaking from ignorance; I would think that that answer to that is yes. In other words, I think it is ~~quite~~ quite normal to pay a royalty for the use of the patent, or something of that kind, if it is extended to the ~~industry~~ industry. In other cases, a patent

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AA

(Mr. Tatham)

for example, I think the Coca-Cola Company has made ~~it~~
history in keeping that formula secret. ~~as I know you know,~~
There are cases and cases, I would think.

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M.R.

(Mr. Tatham)

~~made its history on keeping a formula secret. So there
are no secrets and, consequently, I would think~~

Mr. Gaunt: Well, you see, what I was concerned about, Tambllyn was going to do the work for you; ~~at~~ Tambllyn is doing the work for Canada Square and yet there were references made to these various patents which, presumably, gave Canada Square an advantage in their pricing. So that my concern was that in the development, first of all, of the patents and then secondly in the use of those patents. I was wondering if, in fact, with the permission of Canada Square, presuming that Canada Square developed those patents, would they be able to allow Tambllyn to use those patents in the construction of the building and I presume that as far as you are concerned the answer is yes.

Mr. Tatham: Well, even if the answer were no, it would not concern me whatsoever. We could produce a very high quality, economical design solution for the airconditioning.

Mr. Chairman: Mr. Tatham, in your design in your building, there was nothing that you had to go to anybody else as far as getting authority to use patented processes ...

Mr. Tatham: No.

Mr. Chairman: ...other than authority you already had?

Mr. Tatham: No.

Mr. Gaunt: Just one other matter, Mr. Tatham, I just wondered if I could run through briefly with you the cost components as they relate to structural cost, mechanical cost - well you mentioned that yesterday, I think, you said ~~rough~~ mechanical costs roughly \$4.00 a square foot, if I recall correctly?

Mr. Tatham: Yes, that would exclude the - I think it would be \$5.00 with - part and parcel ~~of~~ mechanical is plumbing and what have you and you have to be careful - you know, how we use these figures again. I think it works ~~and~~ out to about \$5.00 a foot, if I remember correctly.

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M.R.

Mr. Gaunt: And structural would be ...

Mr. Tatham: Similarly I think it was \$4.85 to
\$5.00 a foot.

Mr. Gaunt: Roughly the same. Electrical?

Mr. Tatham: I think around \$2.

Mr. Gaunt: Architectural?

Mr. Tatham: Well, architectural finishes - it's a
matter of prorating those. I'd have to go back to my working
papers here, Mr. Gaunt, before I could find the piece of paper
that could give me an initial ability to answer that question.

Mr. Chairman: While you are looking for that
I think we will have a break for 15 minutes.

H-1253 to follow

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PLG

Mr. Chairman: Ladies and gentlemen, I call the meeting back to order, ~~and~~ When we ~~recessed~~ recessed, Mr. Gaunt, you were in the process of asking a question and Mr. Tatham was in the process of locating the answer. Do you ~~have~~ have that answer now Sir?

Mr. Tatham: I believe the question related to architectural items and we have the figure of two million dollars, ~~the~~ which is about two dollars a rent^{ED} foot.

Mr. Gaunt: And were there ~~eleven~~ elevator costs
Mr. Tatham?

Mr. Tatham: One and a half million dollars.

Mr. Gaunt: Which would be a dollar ~~and~~ and a half?

Mr. Tatham: Yes.

Mr. Gaunt: And ~~eleven~~ costs?

Mr. Tatham: Two million two.

Mr. Gaunt: Which would be \$2.20 a square foot?

Mr. Tatham: Yes.

Mr. Gaunt: That's all I have. Thank you very much.

Mr. Chairman: Thank you Mr. Gaunt. Mr. Deans.

Mr. Deans: Thank you Mr. Chairman. I want to refer to some ~~notes I have made~~ notes I made yesterday when I was listening to the witness's statement. I want to refer him back to something I can't find but can recall; his discussion of the value of the University site both commercially and as an office complex and I want to ask whether or not -- first of all, am I right in my recollection that you did say, Mr. Tatham, yesterday that you didn't feel that the University Avenue site was good for not only commercial development, commercial in the sense of retail commercial development, but that it wasn't the

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PLG

(Mr. Deans)

most desirable site for leasing purposes, for office
accommodation, other than to government? Is that a reasonable
capsulizing of what you said? Not ~~the best site~~ *the best site?*

~~Not the best site~~

Tape H 1254 follows

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M.R.

(Mr. Deans)

~~For the purpose of this meeting, the following is a summary of the discussion:~~

~~This is a summary of the discussion.~~

Mr. Tatham: The answer to that, Mr. Deans, is generally correct. You can get into specifics but the history of University Avenue is for many, many years in the city of Toronto is for a larger than normal vacancy factor in office buildings and every major building that has been created has a substantial government tenancy.

Mr. Deans: Let me just try to fully understand. The reason it has substantial government occupancy or tenancy ~~is~~ is that because ~~the~~ the government is located on University Avenue or because it is difficult to rent to other than government persons?

Mr. Tatham: I would suggest both.

Mr. Deans: Both?

Mr. Tatham: Both.

Mr. Deans: Now, am I right then in assuming that you don't feel that it is possible - I'm talking about you in the corporate you - I'm not talking about you personally at this point, it would be the view of Y and R that it would be extremely difficult to establish University Avenue as a prime site for retail commercial and other rental purposes?

Mr. Tatham: Well, there

Mr. Deans: Has it been tried?

Mr. Tahtam: Well, yes. There are some very substantial head office buildings ~~is~~ located on University Avenue. If you go up and down University the Government of Canada is there, MacLean-Hunter are there, the Travelers Building is there, the National Life Building is there but if you examine those buildings, the Sun Life Insurance Company is there, if you examine those buildings, you examine their history, certainly they have the prestige and the dignity of University Avenue.

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(Mr. Tatham)

University Avenue is our widest thoroughfare and it also has a subway line running down it. And those companies obviously made a decision because they want the prestige and dignity of University Avenue. But if you examine the vacancy factor on University Avenue, it is higher than the city hard core and if you examine the occupancy of University Avenue, you will find it is substantially occupied by government uses.

Mr. Deans: Okay.

Mr. Tatham: In those spaces that is not occupied by the major tenant.

Mr. Deans: Would you say ...

Mr. Tatham: That begins to improve as you get ~~xxx~~ close to the Court House, where you have some legal firms that are located in the Canada Life, for example.

Mr. Deans: I was going to come to that point then. Would you say that the more northerly part of University Avenue closer to College and let's say from Queen Street up, that as you get further up from Queen Street towards the Queen's Park complex that the locations are less desirable for commercial purposes in the view of developers?

Mr. Tatham: Yes.

Mr. Deans: Okay. Have there been any attempts made to establish alternative retail-commercial on University Avenue? Has any consideration been given to it? Have any studies been ~~xxx~~ done?

Mr. Tatham: I beg your pardon?

Mr. Deans: Have any studies been done on whether or not University Avenue might be a suitable place to establish alternative retail commercial development? I say, alternative to Bay or Yonge or .

Mr. Tatham: I ;can't answer that.

Mr. Deans: You have done none?

Mr. Tatham: Well, when you say we have done nothing, I know it's the desire of the University Avenue

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M.R.

(Mr. Tatham)

Committee of the city of Toronto to incorporate people places along University Avenue to make it more pleasant and that type of thing.

But there is not life on the street at night because of the way it is constituted.

Mr. Deans: And you are saying that it would be extremely difficult to establish that by way of a development?

Mr. Tatham: No single development can do it, in my opinion.

Mr. Deans: Okay, but if you built this development at the corner of College and University that it would be your opinion that no matter what was done to it by way of attraction for commercial retail purposes, that it still would not serve as a catalyst to develop University Avenue as a people place, using your phrase?

~~Mr. Tatham: It might make a gesture towards helping...~~

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fvk

~~the people place, [unclear]~~

Mr. Tatham: No, it might make a gesture towards helping them.

Mr. Deans: Okay. Let me ask you something else. What would the cost of the interim financing be over three years?

Mr. Tatham: That is related to how much money you have invested. I could ~~not~~ tell you what we had allowed for interim financing; ~~the~~ \$2.4 million was the figure that we have.

Mr. Deans: That was on \$30 million?

Mr. ~~Deans~~ Tatham: Yes.

Mr. Deans: On \$30 million?

Mr. Tatham: Yes.

Mr. Deans: So that you are then talking about a total cost of the complex of something like \$32.5 million?

Mr. Tatham: No, no. That's incorporated in -

Mr. Deans: That's what I want to see.

Mr. Tatham: That's incorporated within there.

Mr. Deans: That's included in the \$30 million?

Mr. Tatham: Yes.

Mr. Deans: I see. I couldn't find that and I wondered why. Okay, the \$30 million is inclusive of everything, interim financing and everything else?

Mr. Tatham: Yes.

Mr. Deans: Thank you. ~~So that's all~~ I want to go back to the other point for a moment. Did you have a discussion, in depth, with Hydro about the problems of development in the commercial-retail area?

Mr. Tatham: No, there was no discussion in depth. I had a phone conversation, as I recall, ~~in reference~~ with Mr. Candy on the point and they asked if I ~~my~~ would put the views in writing which I expressed to them in the phone conversation, which I did.

Mr. Deans: Is it fair to say that you emphasized your desire to proceed with the Eaton site and de-emphasized your

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(Mr. Deans)

desire to build on the Hydro site?

Mr. Tatham: Yes.

Mr. Deans: Would it be fair to draw a conclusion that perhaps de-emphasize it to the point where Hydro ~~can~~ might have drawn the conclusion that you weren't terribly interested in developing on the Hydro site?

Mr. Tatham: I can't answer for Hydro. I know that insofar as we were concerned that we would have been very interested in proceeding with this development on the Hydro site. We were not as interested in proceeding with it on the Eaton site.

Mr. Deans: I'm sorry, you'll have to tell me that again.

Mr. Tatham: The figures ~~and~~ reflect the fact that we were not as interested in proceeding with it on the ~~Hydro site~~ -

Mr. Deans: Hydro site?

Mr. Tatham: - Hydro site. But the figures also reflect ~~that~~ the fact that it would have been very profitable for us to have done so.

Mr. Deans: Yes. Did you make it clear, absolutely clear, in your discussions and your correspondence with Hydro that you wanted to build on the Hydro site? That if they didn't accept the Eaton proposal, so be it, you wanted still ~~to~~ to build on the Hydro site?

Mr. Tatham: Yes.

Mr. Deans: You're convinced that that was made abundantly clear to them, that there could be no misunderstanding ~~and~~ about your absolute interest in developing on the Hydro site?

Mr. Tatham: Well, we're on record with the fact that we were quite prepared to proceed on the Hydro site and at a very attractive proposal.

Mr. Deans: ~~Would~~ Would you have been prepared to negotiate some arrangement for a ~~share~~ sharing of the savings in the event that there were savings on the amount of the mortgage that was raised?

Mr. Tatham: On the amount of the mortgage that was raised?

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fvk

Mr. Deans: On the amount of the money that was raised for the purpose of developing the development? As we were speaking about it earlier today, you say that at one point you could have returned the money to the source.

Mr. Tatham: The answer to the question is yes.

Mr. Deans: Have you ever done it?

Mr. Tatham: Oh, certainly.

Mr. Deans: You have entered into an arrangement with other persons where you shared any saving with them?

Mr. Tatham: Yes. As a matter of fact we've entered into the arrangement where the true cost of the understanding when known ~~as a~~ reflected in the ~~rental~~ rental.

Mr. Deans: Was that matter ~~ever~~ ever raised with you?

Mr. Tatham: No.

Mr. Deans: It was not. Okay. Can I ask you, Mr. Tatham, if you would take a look at exhibit 67. I believe you have a copy. If you don't, we'll wait until you get one.

While you're getting that can I ask, you have looked at the contract now, are there any matters in that contract that were agreed to, subsequent to the proposals, that your company would

)Tape H-1256 follows)



H 1256-1

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11:55-12:00 noon
PLG

(Mr. Deans)

~~You have looked at the contract now. Are there any matters~~
~~in that contract that were agreed to subsequent to the~~
~~proposals that your company would not have been prepared to~~
discuss and to come to a resolution about?, a similar
resolution about?

Mr. Tatham: When you say I have looked at the
contract ~~2~~,

Mr. Deans: You say you haven't looked at it
often enough, that's all.

Mr. Tatham: I have seen the outside cover and
I think I have seen three specific pages that have been
referred to .

Mr. Deans: ^{Then} ~~that~~ you can't answer the question?

Mr. Tatham: No, I am not able to answer the
question.

Mr. Deans: That's fine. Is there anyone in your
firm ^{who} ~~that~~ has looked at it?

Mr. Tatham: I believe there is a member of our
firm ^{who} ~~that~~ did look at it, yes.

Mr. Deans: Do you know of any point that is in
that contract ~~that~~ do you personally know of anything in the
contract that your company would not have been prepared to
negotiate on and come to similar conclusions about?

Mr. Tatham: I am unable to answer the question,
Mr. Deans; I just don't know.

Mr. Deans: Nothing has been brought to your
attention?

Mr. Tatham: No. Nothing has been brought to my
attention.

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11:55-12:00 noon
PLG

Mr. Deans: I'd like to ask you to begin at page 26 if you would. 26; it is 5.3.3.

"Alternate space cost comparison"

is the heading. Yesterday you were asked in regard to the building costs, and you will note that there and in other places throughout this document there is reference to the cost per square foot. This isn't the only place but I am using this as an example.

Mr. Tatham: Yes.

Mr. Deans: I want to say to begin with that I personally consider that this document is perhaps the -- given that there were some minor changes made to it -- is the document that convinced, or was used primarily to convince the Commission to choose. Now I am not saying that that document provided all the background material.

Mr. Shibley: I think to be accurate that the document in question was in the possession of Mr. Nastich at the meeting ~~of~~ of June 29 and he provided information from it. The document was not provided to the commissioners; rather a shorter seven-page memorandum of June 23 was provided to them.

Mr. Deans: But this document was provided to Mr. Gathercole. I have a note ~~→~~

Mr. Shibley: Yes, he had it on his trip to Japan, but I just say that at the Commission meeting it was not part of the material provided to the Commissioners except that information from it was used by Mr. Nastich who did have a copy.

Mr. Deans: And I want to be clear -- Mr. Gathercole had had the benefit of the document in its entirety?

Mr. Shibley: Oh, yes.

Mr. Deans: Now I am right in understanding, Mr. Tatham, that you do not know where HYdro could have arrived at the figure of \$28 per square foot?

Mr. Tatham: Yes.

Mr. Deans: Yes, I am right?

Mr. Tatham: Yes, you are right.

Mr. Deans: That there was never a discussion between you and anyone at Hydro in regard to the cost per square foot of the building?

Mr. Tatham: Other than the reference that I made to a meeting with Mr. Candy and some other individual whom I don't ~~identify~~ ^{his} name is Mr. Uiska and myself, in which figures were bandied about.

Mr. Renwick: ON April 7?

Mr. Tatham: About that time, you know, subject to making reference.

Mr. Deans: Were you ever asked to ~~consider~~ consider a figure of \$34 per square foot?

Mr. Tatham: No.

Mr. Deans: Were you ever asked ~~whether~~ what, in fact, Hydro could expect to get by way of quality for \$28 a square foot? Was the question ever raised with you?

Mr. Tatham: Well, I had a number of conversations over the period with Mr. Candy, trying to explain to Mr. Candy that these figures were very odd figures; that the configuration of the building was an important element in the cost, and that you had to be careful as to what you are talking about and whether you are talking about gross square foot, whether you are talking about above grade, whether you are talking about rented or what you have you. For example, these figures here, buildings cost \$34 a square foot, I don't

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(Mr. Tatham)

know whether that is a gross square footage cost, whether that includes below grade; the entire building -- everything that is going to be built; and whether that \$28 is the same thing; whether it is -- I just don't know.

Mr. Deans: What I am primarily interested in is to be sure that there was never a time when you sat down with Hydro and discussed the per square foot cost of any building that you proposed.

Mr. Tatham: Other than that meeting where discussions were just bandied about, to which I referred on April 7, the answer to that is no.

Mr. Deans: Okay. Did you ever discuss with them the square foot cost of any other building that you had built?

Mr. Tatham: Yes.

~~Mr. Deans: Did you perhaps refer to some other buildings?~~

Tape H 1257 follows

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AA

(Mr. Deans)

~~cost of other buildings that you had built.~~

~~Mr. Tatham: Yes~~

Mr. Deans: Did you perhaps refer to some other buildings and point out that that had cost "X" dollars per square foot to produce.

Mr. Tatham: Yes.

Mr. Deans: Was there ever a discussion with them in regard to that as to what you ~~meant~~ meant by cost per square foot, whether gross or net.

Mr. Tatham: Not in detail, no.

Mr. Deans: Now, if you would turn onto page 28, I want to look at what is called a "Qualitative Assessment" and it is 5.3.4. If you would read it with me, it says, "Based on the proposals presented, the experience of each of the developers and the feedback received from clients of some of the developers, it would be our considered opinion that Canada Square Corporation would best meet the requirements specified."

"The other developers appear to be handicapped . . ."

Mr. Tatham: I am sorry, what page are you on?

Mr. Deans: 28.

Mr. Tatham: Oh, I am on the wrong page.

Mr. Deans: At the bottom. And now, I come to the important / ~~part~~ part. "The other developers appear to be handicapped in meeting these objectives as follows:"

It deals with all of the developers. You will note that you get very little space, but nevertheless ~~and~~ on page 29, it says, "Y and R. Limited prior experience in lease purchase agreements."

Is that an accurate assessment of the Y and R

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AA

(Mr. Deans)

position with regard to lease purchase?

Mr. Tatham: I would say definitely no.

Mr. Deans: Do you have documentation of any kind which would show that you have extensive ~~experience~~ experience in lease-purchase agreements?

Mr. Tatham: We have virtually entered over the period of 50 years in virtually any agreement that exists in the development process.

Mr. Deans: And you could have, had you been asked, you could have produced evidence to the effect that you had extensive prior experience in ~~lease-purchase~~ lease-purchase agreements.

Mr. Tatham: When you say "extensive ~~prior~~ prior" — I don't know what you are hanging your hat on really.

Mr. Deans: Well, I am not hanging it on anything. I want to know whether you believe you could have shown that.

Mr. Tatham: There is nothing remarkable about a lease-purchase agreement is what I am saying.

Mr. Deans: Thank you. The second point is "limited experience in projects of this size."

Is it fair to say that you had "limited experience in projects" of the size of the project proposed for the development for Hydro purposes.

Mr. Tatham: Everyone has limited experience of this size. It is not often that you build in Canada one million square foot office buildings.

Mr. Deans: How many ~~you~~ would you think had been built in Metropolitan Toronto over the last 25 years?

- Mr. Tatham: Very very few. At the time we built the ~~Richmond~~ Richmond-Adelaide Centre, which was in 1966, that was the largest office building in the City of Toronto. That is of the order of 460,000 rentable feet.

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~~CONFIDENTIAL~~

Mr. Deans: Can I ask you whether the - whether experience in the size of project at what point do you consider yourself - this is obviously your own personal view - but at what point do you consider yourself to be suited to ~~the~~ building a project of a million square feet.

Mr. Tatham: Well, the Royal Bank, in their wisdom thought that we were sufficiently ~~well~~ qualified to give them expert counsel in building a building bigger than this.

Mr. Deans: So you have then experience in the field.

Mr. Tatham: Definitely.

Mr. Bullbrook: Would you ask the witness if he has any personal knowledge of the experience of Canada Square prior to this contract in a one million square foot building. If he has any personal ~~statement~~ knowledge . . .

Mr. Deans: Yes, I would have asked Canada Square, but do you have any knowledge?

Mr. Tatham: Well I know the buildings that Canada Square has built. They built the building at Yonge and Eglinton. They built the OISE building and they have added to the one at Yonge and Eglinton.

Mr. Deans: Are those of size to ~~well~~ qualify them to have been categorized as having experience in projects as such.

Mr. Tatham: Well they are 'so-so' sized buildings. I think they are less - I am not certain of the size but they are less than a million square foot rented.

Mr. Deans: OK. Can I ask you for an opinion of that section dealing with simply V and B. Do you feel - that those - the third statement ~~and~~ obviously refers to your internal management and maintenance staff which is a plus

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AA

(Mr. Deans)

factor, I presume. But do you feel that ~~that~~ that is a fair statement to make about Y and R and their ability to deal with the project?

Mr. Tatham: You are asking a prejudiced witness.

Mr. Deans: No I am not. No I am not.

Mr. Chairman: He is asking for your. . . .

Mr. Deans: I am asking for your opinion based on your experience.

Mr. Chairman: I will be surprised if we get any other answer but one but . . .

Mr. Deans: I could answer it myself but I want to hear it.

Mr. Tatham: If you have not already detected it, I am rather proud of the history of our company and what our capacity is.

Mr. Deans: OK. Do you think that Ontario Hydro met with you sufficiently to have come to conclusions that those kind of statements could be made about Y and R. Do you think that they have sufficient knowledge of Y and R to be able to come to decisions about the matter of whether you have experience in lease purchase or whether you have

H 1258 - 1 follows

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V.H.

(Mr. Deans)

~~to be made by Y & R~~ Do you think that they have sufficient knowledge of ~~■~~ Y & R to be able to come to decisions about the matter of whether you have experience in lease-purchase or whether you have sufficient experience in projects of this size?

Mr. Tatham: Well we, as you know from the record, had very few meetings with Hydro. The person with whom I had the most contact was Mr. Candy, but even that contact was not an in-depth contact and I do not know the extent to which they did research relative to our capacity as a company to fulfill the need.

Mr. Deans: Were you ever asked to produce anything to them to show that you were capable of doing either of those two things?

Mr. Tatham: No. Our proposal made reference, as each of you are aware, to the history of our company and what we had done recently.

Mr. Deans: Thank you. I want to now ask if you would turn to page 30 and its "5.3.5 Criteria for Selection". It says:

"The basis on which the four proposals have been received and presented does not readily lend itself to selection of any one developer as being most economic."

That's a matter for opinion, I suppose.

"The background material and information available from some developers (Canada Square) is well presented and documented, while others would appear to have prepared their proposal on a strictly hypothetical building without due consideration ~~■~~ for our unique requirements. This may be due to misunderstandings as to their terms of reference and objective."

At that point, it would appear that the writers of the document certainly were leaning towards Canada Square and they were substantiating that on the basis of some things

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(Mr. Deans)

like the fact that the other developers, including yourselves, had not prepared or not presented, prepared I suppose, background material and information as well as Canada Square, had not documented as well as Canada Square, that you had prepared your proposal on a hypothetical development without considering their unique requirements. I want to ask you whether you believe that that is a fair statement about your proposal?

Mr. Tatham: Well, I can only answer in this way. Each of you have a copy of ^{our} ~~the~~ proposal. Within the time frame that we had available to us, it was a well documented proposal based on the information that was made available to us. It met every requirement that we had knowledge of that the Hydro wanted and it further included \$600,000 for their custom~~er~~ requirements. ~~There~~ went out of ~~the~~ way to point out that the concept as we conceived, was a concept that the time frame was such that the finished architecture hadn't evolved. For example, there had not been time to create an architectural rendering, for example, of the concept and the scheme such as, you know, we had subsequently developed. Does that answer your question?

Mr. Deans: It begins to, Mr. Tatham. I want to ask you, was there any misunderstanding by you or Y & R about the terms of reference or the objective?

Mr. Tatham: I am not certain that I am able to fully understand your statement.

Mr. Deans: Let me put it to you another way. Given the information that was provided to you, did you to the best of your knowledge fulfill all of the requirements of the information that was provided to you?

Mr. Tatham: Precisely. Definitely.

Mr. Deans: Did you make attempts to meet with Hydro to further discuss the matter?

Mr. Tatham: Yes.

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Mr. Deans: Was there anything asked of you that you were unable or unwilling to present to them?

Mr. Tatham: No.

Mr. Deans: Do you believe that you misunderstood any of the terms of reference provided by Hydro?

Mr. Tatham: No.

Mr. Deans: Was it ever brought to your attention that you misunderstood any of the terms of reference provided by Hydro?

Mr. Tatham: No.

Mr. Deans: Was the building that you proposed to build a hypothetical building? Any more hypothetical than any other building under the circumstances?

Mr. Tatham: No.

Mr. Deans: Did you give due consideration to the unique, whatever they are, requirements of Hydro?


Mr. Tatham: Yes.

Mr. Deans: I don't want to ask anything else, Thank you.

Mr. Chairman: All right. Mr. Renwick, then Mr. Allan then Mr. Hodgeon. Mr. Renwick first.

Mr. Renwick: Mr. Tatham, my questions are directed only to one specific area. ~~My notes and bearing in mind that I didn't have any opportunity of being~~

H-1259 follows



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H - 1258 - 1

(Mr. Renwick)

~~My notations, and bearing in mind~~
that I didn't have the opportunity of being here yesterday morning, show that the meetings or contacts with Hydro, other than by telephone, were November 8th, 1972, November 11th, 1972 ~~and~~

Mr. Tatham: 1971; I am sorry.

Mr. Renwick: Sorry, '71. November 8th, 1971, November 11th, 1971, December 14th, 1971, January 11th, 1972; that you submitted your proposal on the Park Centre site on January 20th and your proposal on the University Avenue site on February 7th; and there was a further meeting on April 7th. Those are the only meetings that took place or contacts other than by telephone?

Mr. Tatham: Yes.

Mr. Renwick: Now, then, if I may refer ~~to~~

Mr. Tatham: I think there was one other contact.

Mr. Candy was at our topping-off ceremony for a new building at 390 Bay Street. That is the only other contact that I had.

Mr. Renwick: Right. Now if you would be good enough to refer to Hansard of Wednesday afternoon, July 11th, at page 1224 - 1; I want to draw your attention specifically to this paragraph:

"Mr. Shibley: What I am wondering about, Mr. Tatham, is this. Having asked for these preliminary submissions is the next step for Hydro to single out one and negotiate with him alone or is it a case of moving forward with two or more to the bitter end and then make a selection?

"Mr. Tatham: Well, this is a matter of judgment. I don't think there is any one single answer to that. People who are in a position to make the decision are the people who make the decision and there are a number of different approaches."

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~~Mr. Renwick~~

(Mr. Renwick)

Then over the page on 1224 - 2, in response to Mr. Bullbrook's question:

"Mr. Tatham: Because, in point of fact, both approaches are used. There are some organizations whether they be Hydro or whether they be a private company who retain unto themselves their own method of evaluating the proposals that are submitted, and they have their own ~~weighting~~ ^{weighting} system and you are advised whether you have been successful or not successful; or they have narrowed it down to ~~two~~ two or three and they want to bring these two or three together.

"There are a number of approaches. There is another approach whereby I have made a complete presentation with renderings and submissions and specs before entire boards of companies where the entire board wanted to be privy and have the opportunity of asking you specific questions relative to your proposal. So there is no one approach that holds".

That was following up on questions which Mr. Shibley asked, starting on page 1223 - 2 of Hansard, which I am not going to quote, ~~but~~ ^{having} regard to the variety of responses after a proposal has been submitted, as you have indicated in your reply, and that there is no tailor-made or formal or -----

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Tape H - 1259 follows

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(Mr. Renwick)

~~... after a proposal has been submitted as you have indicated in your reply and that there is no further made, or formal, or accepted method of response. Could you indicate to the committee what you expected at Y and R, having done the work, and submitted the proposal on February 7? What was your anticipation as to the next thing that would have happened?~~

Mr. Tatham: There are only two possible responses that I can make to that. It would appear to me that there were two things that could have happened. One, we could be advised that our proposal was not well received and that was the end of the matter and someone else was successful. Two, that they wanted to explore with us further, our proposal in depth, to make some - for one of two reasons, ^u either because we had been selected, and/or, because they wanted more information to make comparison with some other person who was close. So, when you say, what did we expect I expected one of those two approaches.

Renwick:

Mr. ~~Renwick~~ What did happen?

Mr. Tatham: Well, it sort of dingle-dangled along and there was no precise, clear-cut answer that came at a given moment in time. My contact was with Mr. Candy and, ultimately, it evolved that we had not been successful.

Mr. ~~Renwick~~: How did you learn that you were unsuccessful, and when?

Mr. Tatham: I think in the street, ^{bu} I honestly can't remember.

Mr. Renwick: So is it -

Mr. Tatham: I don't think we had any formal ^{communication} ~~indication~~ to advise that. I can't recall ~~and~~ any.

Mr. Renwick: So, having submitted the proposal on February 7, and ~~February 7~~ having had the meeting with Mr. Candy on April 7 ~~and~~ and whatever telephone communications took place in the interval, ~~that~~ there was no further communication of any kind made by Hydro to Y and R?

Mr. Tatham: Not that I'm aware of and I was the contact

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(Mr. Tatham)

person.

Mr. Renwick: What was your feeling about it then as it dribbled out to this unclear end?

Mr. Tatham: Unusual! When you work hard and you make a proposal you expect a clear-cut solution and/or some ongoing negotiations.

Mr. Renwick: And did you feel that from the point of ~~the~~ view of Y and R that you did what could be expected of you to get a response from Hydro?

Mr. Tatham: Yes.

Mr. Renwick: I have no further questions, Mr. Chairman.

Mr. Chairman: Mr. Allan.

Mr. Allan: Mr. Chairman, I just have a couple of short questions. I'm wondering, Mr. Tatham, if the person for whom you're submitting a proposal doesn't like the overall development - supposing ^{just} for discussion that Hydro may have decided that this is the type of building they wanted - your proposal is quite a different building, would it be possible to discuss the possibility of a change in the overall building? Or, when you make the proposal, do you make the proposal and if the overall proposal is not the type desired, that's the end of it. What would be your experience in that connection?

Mr. Tatham: Well, again, both matters have, in fact, arisen. Generally, however, if the proposal you make is not well received by the recipient it's rejected, ~~but all they are~~

(Tape H 1261 follows)

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(Mr. Tatham)

~~...all ...~~ But if they are sufficiently impressed with other aspects and other attributes, we have entered into and have been successful in doing a complete re-design.

Mr. Allan: Yes. The other question that I was going to ask you: I noted in the various reports that have been presented for consideration by the senior people of Hydro that the cost of the money is always stated. I have great difficulty in seeing - great difficulty in realizing that the cost of the money really - that's a very important item by itself; that is, it seems to me the cost ~~of~~ per square foot of the rental is really - and I would think that they would want to know that you could finance and where you were getting your money, but ~~whether~~ whether the rate is six and a half or seven and three-quarters or eight and five-eighths - would you think that had an influence ~~in~~ in their consideration of your proposal?

Mr. Tatham: It should have had a vital interest in the consideration of the proposal. The cost of money is one of the most significant elements in rent

Mr. ~~Edwards~~ Allan: Yes, but the ~~final~~ final item of importance is the rental rate, isn't it?

Mr. Tatham: The final item of importance is the rental rate but I assume by virtue of asking the question relative to the cost of money that the purpose in asking that question was that the rental rate would fluctuate in accordance with the cost of money.

As I pointed out, we recently entered into a major understanding through which the rental rate was related to the cost of money.

Mr. Allan: Well, I remember your evidence in that connection and your rate was based on the cost of money at the time of the ~~acceptance~~ acceptance of the proposal.

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Mr. Tatham: That's right.

Mr. Allan: ~~per~~ being eight and three-eighths, was it?

Mr. Tatham: Eight and three-eighths ~~per~~

Mr. Allan: Eight and three-eighths per cent. If

there was a difference then there would be an adjustment but if this was approved, I think I remember your evidence stating that you were in a position to make that firm for 30 years?

Mr. Tatham: Yes, subject to the availability of money, which I understood to be available at eight and three-eighths per cent.

Mr. Allan: At that particular time.

Mr. Tatham: At that point in time, yes.

Mr. Allan: Because I don't see any relation

between the cost of the money and the rental per square foot.

Mr. Tatham: There is no relationship in the

proposal other than the statement that this is related to a cost of money of a given amount and I surmise that the reason that question was asked - after all, it was a specific question - by Hydro, to identify the source of funds and the cost of money.

Mr. Shibley: Mr. Allan, may I assist you? I'd note a failure of communication between you and the witness. I think what ~~was~~ the difference is, Mr. Allan is looking at it from Hydro's point of view. It was certainly a vital interest to the developer in forming up the rental rate to know what his cost of money was going to be and to incorporate that cost in the rental rate.

But from the point of view of Hydro, whatever might have been the cost of money to the developer, was not the significant factor but rather what was the rental rate.

Tatham:

Mr. ~~Tatham~~ Agreed.

Mr. Shibley: And what Mr. Allan is wondering

about is why Hydro should have interested itself to this extent as to the cost of money to the developer, when it was only one element in the overall computation of the rental rate. Is that your question, Mr. Allan?

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Mr. Allan: That's my point.

Mr. Tatham: Well, the only assumption that I can relate to ~~these~~ Hydro's asking for the money to be identified was if by virtue of their ~~weak~~ position in the money markets they could have ~~been~~ borrowed money for a lesser rate, then it might have been prudent for them to proceed in some other fashion. That's the only assumption I can make.

Mr. Chairman: If Hydro could have got it for less than you were paying, it might have been to their interest to do the borrowing for you. *John*

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(Mr. Tatham)

~~then it might have been prudent for them to proceed in some other fashion. That is the only assumption I can make.~~

~~Mr. Chairman: Hydro would have got it for less than you were paying. It might have been to their interest to do the borrowing for their own.~~

Mr. Tatham: That's right, yes.

Mr. Shibley: Do the borrowing for you?

Mr. Tatham: The nature of ^{that lease} ~~that lease~~

and the Hydro ~~own~~ covenant is that you have a contract which is highly respected in the money markets and which ^{should} permit you to borrow at the most preferred rate that that type of security permits on a given money market at a given point in time.

Mr. Allan: Of course, I think that in that respect of Hydro borrowing the money for you, ~~that~~ one of the reasons given for the lease-purchase arrangement was to relieve Hydro of that responsibility. ~~and~~ I guess I won't ask you but I couldn't see that the rate of money had anything to do with the proposed rental rate per square foot.

Mr. Tatham: Within the sense ~~that~~ that you are thinking of it, Mr. Allan, you are absolutely correct.

Mr. Chairman: Mr. Shibley, have you got any questions to ask to clear up the ones that I just asked?

Mr. Shibley: No, but I just want to ask the witness. When he made his reference to building Buicks at Datsun prices, it is a matter of concern to this committee why Hydro established a \$34 per square foot benchmark. I am wondering whether we can translate that comment, Mr. Tatham, into a statement that you do not view the quality of a building to necessarily equate with the quantity of dollars that are expended to construct it.

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Mr. Tatham: That is correct.

Mr. Chairman: Mr. Glen Hodgson.

Mr. R. G. Hodgson: Mr. Chairman, the design sketch that is in Exhibit 184, this one here, did that win an award?

Mr. Tatham: This particular building did not win an award. It has never been submitted ^{for an} award. An award was won ^{by} an architectural award was won ^{by} our Parkway Place development as being the outstanding low-rise office space development in Canada in the year that it was conceived.

Mr. R. G. Hodgson: Parkway Place?

Mr. Tatham: Parkway Place. The Allstate and IBM buildings. ~~Max~~

Mr. R. G. Hodgson: Well, this is somewhat of an improved version on that original, is it? Would you say that?

Mr. Tatham: Well, it all depends ^{from} where you sit. I think this is a very exciting -- as a master planning ^{block} ~~box~~ solution, I think this is a superior solution for a ~~12~~ 12-acre site in the heart of a hard-core area. I think it was a very imaginative solution.

Mr. R. G. Hodgson: Do you remember the year that the Parkway Place won the award?

Mr. Tatham: I think it was in 1971.

Mr. R. G. Hodgson: 1971? I want to ask you a question about the memo to file, which is the brainstorming session, just to clear up one thing in my mind. At no time were these proposals ever offered or discussed with Hydro, that are on these sheets?

Mr. Tatham: No.

Mr. R. G. Hodgson: Therefore any references in them ^{did} ~~not~~ not, in ~~the~~ fact, ~~never~~ ever go any farther than an

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(Mr. R. G. Hodgson)

internal document?

Mr. Tatham: That is correct, yes.

Mr. R. G. Hodgson: In your discussions ~~wk~~ with Hydro, I believe in earlier testimony we had a reference that Mr. ~~San~~ Rotenberg had been in touch with certain officials at certain times?

Mr. Tatham: Yes.

Mr. R. G. Hodgson: Was there anybody else in ~~the~~ your firm that you know of in contact, other than yourself or Mr. Rotenberg?

Mr. Tatham: With Hydro?

Mr. R. G. Hodgson: Yes.

Mr. Tatham: Well, at the initial meeting we had Mr. Ranson Parker, who is an ~~arch~~ architect in charge of our design development division, and Mr. Austin Uiska who is an architect ~~who~~ ^{who} works also in that division.

Mr. R. G. Hodgson: Mr. Uiska was formerly with the ~~design~~ ^{design} concept of the ~~regional~~ ^{regional} plans of Hydro?

Mr. Tatham: That's right, yes.

Mr. R. G. Hodgson: He would be on a first ~~a~~ name or first communication basis with Mr. Candy, I would presume, because ~~yes~~.

Mr. Tatham: I can't answer ^{about} the first name basis. In my presence he referred to Mr. Candy as Mr. Candy.

Mr. R. G. Hodgson: In regard to the Eaton site and the corner of College and University, we dealt with the possibility that you would purchase that as a proposal ~~=~~ part of your proposal ~~from Hydro~~ ^{from Hydro}.

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AA

(Mr. Glen Hodgson)

~~the possibility that you would purchase that as a proposal,~~
~~part of your proposal, from Hydro, if you developed the~~
Bay Street site.

Mr. Tatham: Yes.

Mr. R.G. Hodgson: What figure was in the Bay Street site as to valuation of the property? Do you remember?

Mr. Tatham: \$4 million.

Mr. R. G. Hodgson: \$4 million. In other words, Hydro would then in the rental rate, start to ~~to~~ purchase the \$4 million site.

MR. Tatham: Yes.

Mr. R. G. Hodgson: From day one?

Mr. Tatham: Yes.

Mr. R. G. Hodgson: So it is not really true to take the idea that \$7 million would be available over the 30-year period to Hydro to invest.

Mr. Tatham: Certainly, it is true.

Mr. R. G. Hodgson: I don't quite equate that because I think that if you - there is \$3 million difference in the property values and if they start to, in the rental rate, reflect the purchase price of the property, wouldn't it - it would be something different, wouldn't it?

Mr. Tatham: No. They would have available for their use the money that would result as a consequence of a sale ~~of~~ of the lands on the University Avenue site. And as ~~a~~ by-product, they ~~would~~ would inherit the ownership of the land on the Bay Street site.

Mr. R. G. Hodgson: Yes, but wouldn't they start to purchase and pay out . . .

Mr. Tatham: Yes, but it would be ^{buried} ~~varied~~ in the rental figure.

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AA

(Mr. Tatham)

words, if you look at the market of office ~~space~~ space in downtown Toronto today, in buildings of this quality, you get rental rates running from \$8.50, \$9, \$9.50, \$10, \$11 a square foot.

Mr. R. G. Hodgson: But they are two different things. There is no \$2 differential.

Mr. Tatham: Well, the \$2 differential reference was between current market pricing that exists for other buildings of similar quality in the City of Toronto, relative to what could be provided to solve this particular requirement.

Mr. R. G. Hodgson: The other question I would like to ask you, do you have very good knowledge of what space is available in the city now in fairly large blocks of ~~xxx~~ floor space? Is there quite an extensive amount/~~xxxxxx~~ available?

Mr. Tatham: I believe the answer to that question is yes, but I can't cite it in large blocks of space in any one given building. I would assume that the largest block of space that would be coming available in any one given building in the city, at this time, would be the building currently under construction, being phase ^{-Dominion} three, of the Toronto Centre.

Mr. R. G. Hodgson: But that would be ~~xxx~~ fairly high priced.

Mr. Tatham: It would be high-priced space. And it would be in comparison to that space that the \$2 would hold. As a matter of fact, it would be in excess of \$2.

Mr. R. G. Hodgson: Thank you Mr. Chairman.

Mr. Chairman: Mr. Newman.

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AA

(Mr. Chairman)

Mr. Chairman: It is already in the ~~add~~ comparison figure.

Mr. Tatham: It is already in the comparison figure.

Mr. Shibley: In other words, Mr. Hodgson, the rate of \$4.50 per square foot which was being ~~proposed~~ proposed by Y and R was a rate which not only sold a building but sold a \$4 million parcel of land, so that in addition to getting a \$30 million building - I am sorry, the \$30 million was inclusive of the land, was it not.

Mr. Tatham: No, \$34 million.

Mr. ~~Shibley~~ Shibley: \$34 million. So they were providing ~~a~~ a \$30 million building, plus a \$4 million site, within the rate of \$4.50. Is that correct.

Mr. McCallum: Mr. Chairman. I think it was \$4.70 wasn't it that he was talking about.

Mr. Shibley: There is \$4.50 on the Eaton site.

Mr. Tatham: ~~\$4.50~~ ^{\$4.70} on the Eaton site, \$4.50 on the Hydro.

Mr. ~~Shibley~~ Shibley: I have got it wrong. I am sorry. Thank you. It was at the rate of \$4.70. That rate was inclusive of the cost of acquisition of the site.

Mr. R. G. Hodgson: I realize that. Well, then, is the reference in the November 11th meeting minutes as to the \$2 difference in rental rates that was suggested in Mr. Ranson Parker's note, "we might submit ~~to~~ to them a breakdown of the \$2 difference in rental rates." Was this the

Mr. Tatham: Well, what you are making reference ^{the} there to is ~~the~~ prevailing market rental rate. In other

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said that the \$2 would hold. ~~As matter of fact, it would be in excess of \$2.~~

Mr. R.G. Hodgson: Thank you Mr. Chairman.

Mr. Chairman: Mr. Newman, ^{you have been} ~~impatient.~~

Mr. W. Newman: Mr. Tatham, just a few questions.

Yesterday in your evidence I think you said you would be willing to take a 30 year commitment. Did you make this very clear to Hydro that you would be prepared to take a 30 year commitment?

Mr. Tatham: There has been no discussion with Hydro relative to money other than ~~the submission~~ ^{our submission}.

Mr. W. Newman: Did you have a firm commitment for eight and three-eighths per cent on a 30 year basis?

~~Mr. Tatham:~~

Mr. Tatham: I can't answer that. I think I indicated yesterday that that was my assumption and that if you really want to probe that that you should get here those people in our company who have more knowledge of financial matters than myself.

Mr. W. Newman: I see. Now would it be fair to assume from your evidence that perhaps you tried to encourage Hydro to build on the Eaton site and discourage them from building on their own site?

Mr. Tatham: Certainly, we were more anxious for them to go on the Eaton site. We were very anxious to build a building and have a deal and it would be profitable for us to have built on their own site.

Mr. W. Newman: How many buildings do you have in the city of Toronto on a lease-purchase basis now or Metropolitan Toronto?

Mr. Tatham: On a lease-purchase ~~basis~~ basis? We try not to sell our buildings. We have none at this moment. ~~Those that have been~~ ^{There are those that} have been bought. That is usually what happens.

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Mr. W. Newman: You actually have no ~~WA~~ buildings on lease-purchase basis at all?

Mr. Tatham: No. We have a joint venture with a push-pull clause.

Mr. W. Newman: I won't ask you to explain that!

You mentioned a word in passing to Mr. Gaunt I believe in talking about architectural fees or costs, ~~and~~ *about* pro-rating, and of course that would always kind of catch me, at times. Do you do some pro-rating when you're doing *the types of* ~~architectural~~ work on other buildings?

Mr. Tatham: I am sorry, Mr. Newman, I didn't get the thrust of your question.

Mr. W. Newman: You mentioned on the architectural costs or fees that you were pro-rating them, when the question was asked by Mr. Gaunt. I have just forgotten the exact context, but as I say that word pro-rating kind of caught me at that time. Do you believe in the process of pro-rating in buildings?

Mr. Tatham: I am sorry. I don't remember making the statement, and what did I tell you Mr. Gaunt?

Mr. Chairman: I think it was in quite a different context was it not?

Mr. Gaunt: My understanding, Mr. Chairman, was that it was quite a different context. I was asking the input costs, ~~the~~ the various cost components and one of which was the architectural fees ...

Mr. Tatham: That wasn't fees. Those were ~~architect~~ architectural finishes, I believe.

Mr. Gaunt: Right. Right. I'm sorry. That's right. I don't remember the pro-rating comment.

Mr. W. Newman: I just heard the word. The other question I have for you Mr. Tatham is that your company went public in 1969?

Mr. Tatham: Yes.

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Mr. W. Newman: Who controls your company now?

Mr. Tatham: Who controls the company?

Mr. W. Newman: What group or interests control

Y & R?

Mr. Tatham: By that statement, who has the largest block of shares?

Mr. W. Newman: Yes. Who really has controlling interest of Y & R?

Mr. Tatham: The prime block of shares is owned by a company - I will have to think my way through this - which in turn is owned by other companies. I think the way to explain it would be that Sullivan Construction has a large block of shares, the ~~Lehndorff~~ ^{Lehndorff} Group have a large block of shares, Metropolitan Trust have a large block of shares, Mr. Fotenberg has a large block of shares, I have some shares, The general public, ~~and~~ ^{and} I would say that the controlling group would be comprised of the Sullivan Construction and the ~~Lehndorff~~ ^{Lehndorff} Group and Metropolitan Trust.

Mr. W. Newman: The Sullivan group are they ~~any~~ Canadian-based group?

Mr. Tatham: Yes.

Mr. W. Newman: Are they themselves controlled by someone else?

Mr. Tatham: I think Mr. John Prusak ^{is} ~~is~~ the principal in that particular company.

Mr. W. Newman: This is Canadian owned is it?

Mr. Tatham: Yes.

Mr. W. Neman: And my last question, coming back to political donations that you were talking about yesterday, are these book entries or ~~not~~ marked under miscellaneous in your accounting process?


Mr. Tatham: I can't answer the question. I would have to go to our accounting people.

Mr. W. Newman: Right. Thank you.

Mr. Chairman: Mr. Gaunt.

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Mr. Gaunt: I just have one question, Mr. Chairman,
and it results from Mr. Renwick's question. You had indicated,
Mr. Tatham, that ~~the first knowledge that you had that you~~
~~didn't get the job was~~



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M.R.

(Mr. Gaunt)

the first knowledge you had that you didn't get the job was from the street - "in the street" I think, was your term. Did you know or did anyone in your organization have information that the ball game so to speak, was all over prior to July 19, 1972?

Mr. Tatham: I don't know that I can specifically answer that question. I think I have, sort of, memos to file, on phone conversations I had from time to time with Mr. Candy asking him what the status of it was and where the matter lay and when it would be decided and this type of thing. And I would have to make reference to it, going by memory I don't recall - I'm certain we received no written documentation to state that our proposal was not successful and identifying^{to} ~~us~~ who was successful. I don't - without going through - there is nothing in my memory that permits me to answer the question more intelligently.

Mr. Gaunt: So you couldn't identify even roughly what period of time you heard in the street, so to speak, that you had not got the job and that the job had gone to someone else? Even the spring of 1972, the summer of 1972, the fall of 1972?

Mr. Tatham: Well, the last documentation that I can find in my file here is a memo dated April 10, 1972, which followed the meeting of about that date with Mr. Candy and I don't see any further reference that would permit me to refresh my memory on the point

Mr. Gaunt: Thank you.

Mr. W. Hodgson: Mr. Chairman ...

Mr. Chairman: I think Mr. Tatham is looking up something.

Mr. Tatham: No, there is nothing here.

Mr. Chairman: Oh, there is ~~nothing~~ nothing there.

All right. You are through then, Mr. Gaunt?

All right, Mr. William Hodgson.

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Mr. W. Hodgson: Mr. Gaunt's question, did you not contact Hydro to see who got the contract? Usually, you know, the enthusiasm you showed in the job up to that time, did you not contact Hydro?

Mr. Tatham: I was in constant contact with Mr. Candy, as I said, and the nature of the contact with Mr. Candy, by phone, was such that he had indicated that he had made a recommendation but he did not tell me who he had recommended.

Mr. W. Hodgson: Not at that time.

Mr. Tatham: Not at that point in time.

Mr. W. Hodgson: But then you did - you never contacted him to find out who got the job.

Mr. Tatham: I contacted - I was in touch with him.

Mr. W. Hodgson: Well, then, you didn't hear it in the street actually. You got the information from Hydro that Canada Square had got the job.

Mr. Tatham: I think the answer to that is just as I have stated.

Mr. W. Hodgson: That you didn't contact Hydro?

Mr. Tatham: I was in contact with Mr. Candy at intervals of once - two times a week, once a week, once every two weeks.

Mr. W. Hodgson: Well, you wouldn't exactly ...

Mr. Tatham: ...varying period of time.

Mr. W. Hodgson: You wouldn't exactly call Mr. Candy a man in the street then?

Mr. Tatham: No, but I didn't ~~even~~ hear the information ~~from~~ first from Mr. Candy, if I didn't make myself clear.

Mr. Chairman: Mr. Newman.

Mr. Newman: When you were talking about the control of your company you said the Sullivan group were probably the -
Lehndorff &
what about the ~~Lehndorff & Henderson~~ group? Does it take the two of them to give you complete control?

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Mr. Tatham: Yes, they would have to ...

Mr. Newman: I ~~mean~~ mean both companies together to give absolute control. Is that correct?

Mr. Tatham: Yes.

Mr. Newman: I see.

Mr. Deans: Can I ask one final question?

Mr. Chairman: I think we want to get out of here by ten. At least, I think we all want to.

Mr. Deans: Get out by 10.00 o'clock?

Mr. Chairman: Did I say 10.00 - by 1.00.

Mr. Deans: By 1.00. Oh, I was hoping to get out before 10.00.

Mr. Shibley: You should have left it at 10.00.

Mr. Deans: I have only one question. Is there - there seems to be some question raised about whether the developers - which of the developers could devote their full attention to the job. How would your company go about insuring that Hydro got the undivided attention of Y and R during the development?

Mr. Tatham: Well, we are quite a well organized and sophisticated company. ~~I am not sure that we can~~
out...

H 1266-1

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PLG

(Mr. Tathan)

~~we are quite a well known and sophisticated company~~ I
don't know whether you have seen our last annual report.

Mr. Deans: No I must confess I haven't.

Mr. Tatham: Well in that case let me give you
an example. IN the case of the Royal Bank, we entered into
an understanding that is upwards of a year ago with Royal Bank.
We have created a ~~a~~ whole task force whose job is nothing other
than to ~~con~~ concentrate on that. Those individuals at head
office who have expertise are ~~are~~ party to all the major
policy ~~and~~ decisions. Mr. Rotenberg is a member of the policy
committee which meets -- initially it met once every week and
for a long period of time both Mr. ~~Rotenberg~~ Rotenberg and myself
and other key individuals in our organization were present ~~at~~
every design meeting. As the project proceeds and travels through
from the basic concept stage ~~into~~ the ~~the~~ working and
implementation stage then it is not essential that some of the
initial key members be present at every meeting, but there are
key members of our organization who monitor the progress all
the way along and become part and parcel of the design team.

Mr. Deans: Are you saying to me that you would
set up a separate design and project ~~team~~ ^{team} to deal with that
~~project~~ project and that they would be responsible for it
throughout its development and building stages?

Mr. Tatham: The answer to that is ~~yes~~ yes.

Mr. Deans: And they would be answerable to a ~~senior~~
senior person within the organization?

Mr. Tatham: Yes.

Mr. Deans: Would that person be available, given
the problems of individuals, be ~~not~~ available at all times to
discuss with Hydro problems that might be arising?

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PLG

Mr. Tatham: Yes.

Mr. Deans: Thank ~~you~~ you.

Mr. Chairman: Mr. Tatham, I want...

Mr. Gaunt: One short question? I ~~ap~~romise you
it is the last one.

Mr. Chairman: Yes.

Mr. Gaunt: Would it be a fair question, Mr. Tatham,
to ask you from whom you did find out that your organization had
not got the job?

Mr. Tatham: If I was capable I ~~h~~ would have told
the answer to Mr. Hodgson. I don't know, Mr. Gaunt. I just
honestly don't recall. My recollection is that I did not hear
it first from Mr. Candy.

Mr. Chairman: Mr. Tatham, I want to ask you about
University Avenue. Do you know whether there are any special
city of Toronto zoning bylaws or building bylaws ~~now~~ for
structures on University Avenue?

Mr. Tatham: Oh certainly there are.

Mr. Chairman: The building that you were planning
for the Eaton site, the one that we have the sketch of here,
would that meet the requirements of University Avenue, any
special requirements?

Mr. Tatham: The most stringent requirements of
the University Avenue committee, as I understand it, are two;
there is the height limitation and I don't think that building
would be in violation of it. I think that height violation is
on an angular plane and the University Avenue committee is in
the course of changing its rules. At the moment the city of
Toronto has a bylaw in existence which is applicable to
University Avenue and there is a recommendation, I believe, before
City Council to suggest an amendment and a change to that.

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PLG


Mr. Chairman: Well the point I am getting at, do you know of any restrictions in the city of Toronto bylaws that would ~~■~~ have increased the cost of this building if you had moved it over to the University Avenue site?

Mr. Tatham: The answer to that is no. The University Avenue Committee, ~~and~~ ⁱⁿ my understanding of it, is that they are primarily concerned at grade with getting ~~an~~ interesting people-oriented place and they are interested in the building not being excessive in height.

Mr. Chairman: Now my understanding is when you are ~~■~~ pouring concrete that the form of the building or the pour is important. Your building is a set back building. When I ~~■~~ say your building, the one you were planning, how would the pour of ~~the~~ concrete for this building compare with the original plans for the Hydro buildings, the ones they ~~■~~ scrapped, and then in your understanding of the building they are going to proceed with or that is being proceeded with?

Mr. Tatham: Well I can't talk with knowledge and I am really not ~~xxxxxxxxxx~~

Tape H 1267 follows



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fvk

(Mr. Tatham)

~~... talk with knowledge and then I'm really not~~ qualified to answer the question with in-depth expertise. I can only answer it in this way.

It is my understanding that the original Hydro building was a steel-frame building. And it is my understanding, based on a very brief conversation with Mr. Moog, as of about half an hour ago at our recess, that he is envisioning a post-tensioned, poured-concrete structure for this building. Our building, on the other hand, was reinforced concrete. So that, subject to that little bit of knowledge relative to these various buildings, there is nothing about the pouring of the concrete, ~~the~~ ^{the} structure, which is any way in violation of anything in the University Avenue committee.

Mr. Chairman: And cost-wise amongst the three?

Mr. Tatham: Well, cost - again, I'm ~~am~~

Mr. Chairman: Okay, you've completed that. All right, I'm pressing on something you've already said you didn't feel qualified to answer.

Mr. Tatham: I can't answer that.

Mr. Chairman: The question about the design-build method we've been talking about. I suppose, ~~in~~ despite all of the criteria you may establish, in the end result it becomes a matter of opinion for the client, does it not?

Mr. Tatham: I would say the answer to that is yes. Unless ~~there is a great deal of latitude~~ the client knows specifically, and precisely, what the aims and objectives, and goals, and the specifics are, then there is a great deal of ^{of} latitude.

Mr. Chairman: Mr. Shibley, I think you have one or two ~~1~~ and I think that completes it unless somebody else has some others? Mr. Shibley is the end questioner.

Mr. Shibley: Mr. Tatham, I have been asked by counsel for Hydro just to make clear what was intended by the last sentence in the memorandum dated November 11 wherein it states: "We might submit to them a breakdown of the \$2 difference

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(Mr. Chairman)

a little while this afternoon and deal with them since they are here. Are we prepared to do so?

Two o'clock? If we can start then at two o'clock this afternoon.

That's the only witness you have lined up for us?

Mr. Shibley: Yes, Mr. Chairman.

Mr. Chairman: All right. We are adjourned until two pm this afternoon.

Mr. Renwick: Then what is the plan?

Mr. Chairman: Then not ~~on~~ Tuesday sir. Not ~~at~~ unt. e
Tuesday.

Mr. Renwick: At 10 o'clock?

Mr. Chairman: Yes.

The committee then took recess.

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(Mr. Shibley)

in rental rate⁵. Do I take it that the space¹ that was being proffered by you and the other developers for Hydro was being offered at a rate relevant to comparable rented space in the city of Toronto which was lower than that prevailing rate?

Mr. Tatham: Well, I can explain that very simply. Mr. Rotenberg made the comment, in ^{that} first meeting with Hydro, that we felt we could save them something of the order of \$2-plus per square foot rented space.

Mr. Shibley: Just ^{stopping} ~~there~~ there ~~long~~

Mr. Tatham: What we had in mind was a rental rate; now we are talking in terms of the ^(conv) ~~rental~~ rental rate which includes taxes. All our discussions have been excluding taxes. So we had in mind a rental rate figure of the order of \$6.00 ^a square foot; therefore the \$2 saving would mean that the difference for a similar quality building would be \$8 square foot.

Mr. Shibley: On a straight rental basis?

Mr. Tatham: On a straight rental basis, including taxes, ~~there~~ ^{there} simply, as has been ~~discussed~~ ^{discussed}, we were able to ~~produce~~ produce a quality building for that type of figure if you put in taxes. Hydro, I believe, pays an allowance in lieu of taxes to the city.

Mr. Shibley: Thank you, Mr. Tatham.

Mr. Chairman: Mr. Tatham, thank you very, very much. You have been with us all day yesterday and half of today, and much longer, certainly, than we expected. You have been ~~also~~ helpful to us. Thank you very much.

Gentlemen of the committee, Mr. Shibley has arranged ~~XXXXXX~~ for the La France people to be with us this afternoon, Saffrance. La France are fire engines aren't they? Saffrance to be with us this afternoon ~~and~~ we had expected, I should say, arranged that he would follow Mr. Tatham ^{who has been that} ~~because~~ it would be this morning. Now Saffrance has been with us here on two occasions and I would hope that maybe we could come back for

APPEARANCES

Committee members:

J.N. Allan
J.E. Bullbrook
I. Deane
M. Gaunt
L.C. Henderson
R.G. Hodgson
W. Hodgson
J.P. MacBeth (Chairman)
W. Newman
J.A. Renwick
G.W. Walker

Clerk of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Ontario Hydro counsel:

Pierre Genest, QC
James McCallum, QC

Canada Square counsel:

Douglas Laidlaw, QC
Blair Cowper-Smith

Vice-President, Y and R Properties Ltd.:

G.V. Tatham

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Thursday, July 12, 1973

Afternoon session

July 12/73
2:15 - 2:20 pm
CA

H-1268-1

The committee resumed at 2:15 o'clock, p.m.

Mr. Chairman: Ladies and gentlemen, we have our quorum so I call the meeting to order.

Mr. Shibley: Mr. Chairman, I ask that Mr. Safrance be called.

JOHN GERALD SAFRANCE, Sworn.

Mr. Shibley: Mr. Safrance, what is your occupation?

Mr. Safrance: I am currently employed by Wisener and Partners who are a stock brokerage investment dealer firm in Toronto.

Mr. Shibley: And, in particular, is it part of your function to place funds from lending institutions to other parties who require funds for projects such as the head office building of Hydro?

Mr. Safrance: In part, yes. ~~Principal~~ Principally, though, my function is an economist in the area of energy resources.

Mr. Shibley: Yes.

Mr. Safrance: But I do get involved in this type of potential financing programmes.

Mr. Shibley: Had you previously occupied a position with Hydro?

Mr. Safrance: Yes, I did.

Mr. Shibley: And what was that capacity?

Mr. Safrance: The title was economic consulting officer attached to the financial planning group.

Mr. Shibley: In that capacity were you required to be familiar with the economic and financial considerations ~~and~~ affecting Hydro in respect of its borrowings, and, particularly, would you become knowledgeable as to all aspects of ~~the~~ Hydro's circumstances relative to the construction of its head office building?

Mr. Safrance: Much of the work that I did was ~~on~~ a special situation type basis. As far as getting involved in long-term financing programmes and such things as the Hydro building, I may or may not be involved. In this particular instance, I believe I left Hydro prior to when work was being done on that particular facility.

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CA

H-1268-2

Mr. Shibley: Which was when?

Mr. Safrance: It would have been approximately two years June, I believe.

Mr. Shibley: Which would be June, 1971?

Mr. Safrance: Yes.

Mr. Shibley: At that time were you aware that Hydro were contemplating a lease-purchase type transaction for the Head Office building?

Mr. Safrance: No, I was not. I was aware that there was consideration about ~~the~~ getting the project of the head office underway. I was not aware at that time as to which approach they may specifically take in getting this facility underway.

Mr. Shibley: Then I have had placed before you, Mr. Safrance, a series of documents which have been put in exhibit before this committee, being memoranda and correspondence referable to communications between yourself and various people within Hydro. I think the correspondence is all familiar to you. And, chronologically, it appears from exhibit 36 that you had a conversation with Mr. Harold Banks of Ontario Hydro on September 2, ~~1966~~ 1971, and as a consequence thereof remitted to him a letter of September 3, 1971; exhibit 36. Is that correct?

Mr. Safrance: That is correct.

Mr. Shibley: What brought on the conversation with Mr. Banks?

Mr. Safrance: I was aware that the Ontario Hydro was considering the head office building and that there was still a question as to the method by which it may be financed, and having knowledge of this, I pursued this at some point after I'd left Hydro, on a consulting basis, with Wisener and Partners.

Mr. Shibley: Yes.

Mr. Safrance: And based on conversations with Mr. Banks I had suggested a possibility which is outlined in this particular letter.

Mr. Shibley: Prior to your communication with him had you investigated and received information referable to the availability of funds that might be provided to Hydro?

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CA

H-1268-3

Mr. Safrance: No, I did not.

Mr. Shibley: When were you in communication with the Royal Trust ~~reference~~ referable to the financing?

Mr. Safrance: It wasn't Royal Trust; it was Royal Securities.

Mr. Shibley: I'm sorry, Royal Securities, yes.

Mr. Safrance: Royal Securities is a subsidiary of Merrill Lynch, New York. ~~was~~ After ~~making~~ making some initial investigations in Canada as to the availability of funds for this type of project, it appeared at that time that such funds would be relatively expensive in Canada so we pursued this possibility through New York, ~~the~~ Merrill Lynch, of course, having a major presence in New York, we thought would be able to help us on this.

Mr. Shibley: Did you receive a communication from Royal Securities referable to the funding of this project?

Mr. Safrance: Yes, I did.

Mr. Shibley: ~~And would you produce that please~~

H-1269-1 follows

July 12th, 1973

2.20 - 2.25 pm

H 1269 - 1

AA

~~(S. 1269-1)~~
~~CONFIDENTIAL - SECURITY MATTER~~
X ~~CONFIDENTIAL - SECURITY MATTER~~
Mr. Shibley: And would you produce that please.

You are producing from your file, on the letterhead of Royal Securities Corporation Limited, Toronto-Dominion Centre, here in Toronto, dated August 5th, 1971, directed to yourself, Wisener care of ~~W. J. Wisener~~ and Partners from John A. S. Penny of Royal Securities; ^{I am} enclosing copy of a letter received today from Morry Hubbard, which is self explanatory. *I hope it might be of some help to you in firming up the negotiations with Ontario Hydro.

Because it has not been reproduced, I will read it to the committee. The letter itself which is enclosed is a letter on the ~~W. J. Wisener~~ letterhead of Hubbard, Westervelt and Mottelay Inc., 60 ~~East~~ East 42nd Street, New York, dated August 3rd, 1971. It appears to be a ~~W. J. Wisener~~ letter of George M. Hubbard, as follows: "Mr. John A. S. Penny, Royal Securities, Toronto-Dominion Centre, Dear John: With reference to our various telephone conversations relative to the financing mentioned in your letter of July 20th, for the proposed office building for Ontario Hydro Company, I have discussed the matter with the Metropolitan Life Insurance Company. They have advised me, provided we can work out mutually satisfactory terms, that the Met has the money available to make the loan in the amount of \$35 million or \$40 million, which apparently would be required in this case. Of course, it would be also necessary to substantiate the value of the completed property in order to warrant a loan in the amount finally requested. It seems to me we have available here the logical private lender for this financing and I hope it will be possible for you to obtain authority to proceed with this matter. If I can be of further assistance, let me know. Sincerely, Morry."

May I have that made the next exhibit Mr. Chairman.

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2.20 - 2.25 pm

H 1269 - 2

AA

(Mr. Chairman)

Mr. Chairman: Exhibit 185.

Mr. Shibley: Now then, I gather, therefore, Mr. Safrance, that you were in communication with Mr. Morry Hubbard, as early as July of 1971?

Mr. Safrance: That is correct.

Mr. Shibley: And were discussing the funding of the Hydro building as early as that time. Is that correct?

Mr. Safrance: That is correct.

Mr. Shibley: Who advised you in July of 1971 that Hydro were going forward with their plans? May I have the exhibit, Mr. Chairman?

Mr. Chairman: We have just sent it out for reproduction.

Mr. Shibley: Never mind. Never mind.

Mr. Safrance: I wasn't advised that they were going to definitely ~~proceed~~

Mr. Chairman: We were too fast.

Mr. Safrance: I wasn't advised that they were definitely going to ~~proceed~~ proceed with this and it was my hope that, with an offer of financing, it would make the possibility for Hydro to proceed with the construction of that facility possible, and my understanding was ^{that} _A one of the problems, of course, was the financing situation.

Mr. Shibley: Mr. Safrance, as at July 20th, was your source of information, information obtained while you were still at Hydro, or did somebody communicate information to you subsequent to your leaving Hydro?

Mr. Safrance: I think in both situations I had some information that progress on a building is ~~possible~~ possible. I think my communications initially were with Mr. Harold Banks, who is the former assistant general manager, and I did have occasion to have lunch with him to discuss that possibility.

Mr. Shibley: So that even after you left Hydro, you had these ~~discussions~~ discussions, is that right?

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AAA

(Mr. Safrance)

Mr. Safrance: That's correct.

Mr. Shibley: And was it in the course of those discussions that you became alert to the concern of Hydro that it should fund this building without affecting its traditional sources of finance?

Mr. Safrance: That's correct.

Mr. Shibley: Was there ever any ~~discussion~~ discussion between yourself and anyone within Hydro as to what prompted the renewal of effort to get the head office underway?

Mr. Safrance: No sir.

Mr. Shibley: Did you ever participate in any discussion with anyone on behalf of Hydro during the summer of 1971 or at any time, referable to their dealings with Mr. Moog and the Canada Square organization?

Mr. Safrance: No sir.

~~Mr. Shibley: I am not sure that~~

H 1270 - 1 follows

July 12/73

22:25 - 22:30 pm
C.B.

(Mr. Safrance)

as opposed to their bond portfolio. So in that respect it would be regarded as not interfering with the normal pool or stream of funds that would be available to Hydro in the future.

Mr. Shibley: All right, so what you are talking here about is the pool of funds from which Hydro would normally draw.

Mr. Safrance: That is correct.

Mr. Shibley: Now then, I take it therefore it does not relate to the effect upon the assessment of the credit ~~rating~~ rating, if you like, or the total ~~line~~ line of credit which lending institutions might be willing to extend to Hydro.

Mr. Safrance: That is correct.

Mr. Shibley: That is the other side of the coin. That's right?

Mr. Safrance: Yes.

Mr. Shibley: And in that latter connection can you assist this committee as to whether the commitment of Hydro under the terms of a lease-purchase agreement to pay rental over a term of 30 years, rental rate to include the cost of acquisition of a building, whether that kind of a long term commitment would be included in the overall assessment of lending institutions referable to the line of credit to be extended to Hydro?

Mr. Safrance: In my opinion it wouldn't.

Mr. Shibley: Would not.

Mr. Safrance: Would not.

Mr. Shibley: I see. Now when you say 'in your opinion', why do you qualify it with those words?

Mr. Safrance: I think that there are perhaps within Wisener and Partners for example, some ^{few} more qualified

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12:25 - 12:30 pm

C.B.

(Mr. Safrance)

to give that type of assessment.

Mr. Shibley: Yes.

Mr. Safrance: In my opinion and in discussions I've had with the people in general that are the money lenders, this would not interfere with their long term credit rating.

Mr. Shibley: Aside from interfering with it, I want to know whether it would be included in the assessment of the obligations in the overall of Hydro?

Mr. Safrance: No, I don't feel it will.

Mr. Shibley: All right, and that's your best information as well.

Mr. Safrance: I can elaborate on that to the extent that I think lenders, be they in Canada, United States or Europe, would consider the taxing capability of the province, the rate adjustment capability of the organization, and the debt equity ratios within the organization as being the primary considerations, As opposed to having long term agreements on such things as a lease of an office facility.

Mr. Shibley: Would the same answer obtain if Hydro borrowed its money in the ordinary way with a government guarantee?

Mr. Safrance: I'm not too sure I follow.

Mr. Shibley: What I'm saying to you is, would the addition of \$40 million to the capital loan structure of Hydro, moneys raised in the ordinary way with government guarantee,

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DT

(Mr. Shibley)

~~as to the capital loan structure. If it was not an~~
~~ordinary way, the government would not add anything then to~~
the assessment of the loaning institutions of the amount he wanted
to make available to HYDRO.

Mr. Safrance: Yes, it would.

Mr. Shibley: It would?

Mr. Safrance: To the extent that this would be
included, I assume, in the balance sheet calculation in assessing
Hydro's credit rating, if it affected its debt equity ratio, for
example, This could be a consideration, along with others.

Mr. Shibley: Well, it could be, would it be?

Mr. Safrance: I don't know, but I would assume it
would be.

Mr. Shibley: So on the one hand if it had borrowed
with a government guarantee, it it would be part of its statement
of capital on its financial statement pertaining to account but
the lease obligation, you say, would not be. Is that correct?

Mr. Safrance: In my opinion, no

Mr. Shibley: All right. Now, then, when you made
this proposition in this letter, were you aware, Mr. Safrance,
that there was a limitation upon Hydro under the terms of its
bond purchase agreement of August 4, 1969, with the Deutsche
bank that Hydro would not secure any bond issue without, at the
same time, letting the bond holders of that issue share pari
passu in such security? Were you aware of that?

Mr. Safrance: No, I was not

Mr. Shibley: Are you now alert to the fact that
that provision in that bond purchase agreement acted as a restraint
upon Hydro in accepting the type of financing that you were
proffering in this letter of September 3?

Mr. Safrance: Yes, I am.

Mr. Shibley: All right. Now, then, I gather
therefore that Mr. Banks did not alert you to that limitation
upon Hydro. Is that right?

Mr. Safrance: That's correct.

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DT

Mr. Shibley: And neither di_d Mr. Sissons when you later had communication with him?

Mr. Safrance: That's correct.

Mr. -Shibley: And neither did you receive any communication from Mr. Gathercole to that effect?

Mr. Safrance: That's correct.

Mr. Shibley: You had discussion with Mr. Nastich about the matter and did he raise that problem before you?

Mr. Safrance: Yes, he did.

Mr. Shibley: All right, so that it was not until Mr. Nastich came along that anyone in Hydro confronted you with the hurdle created by that bond purchase agreement to the acceptance of this kind of money?

Mr. Safrance: That's correct.

Mr. Shibley: All right. Now, just to finish with "Proposition this first exhibit, you go on ~~on proposition 2~~, a direct financing of the nature discussed eliminates ownership by the developer." That suggests to me, Mr. Safrance, and correct if I am wrong, that there was already discussion as at September 2nd when you were having your meeting with Mr. Banks of a developer type arrangement for the head office building.

Mr. Safrance: That's correct.

Mr. Shibley: And a lease-purchase was discussed then at that time?

Mr. Safrance: I think they mentioned looking at several alternatives, one of them could be a lease-back, one could be direct ownership. The course of action that they were going to follow I was led to believe was being studied at that time.

Mr. Shibley: Yes. *And that's as much as you knew about it?

Mr. Safrance: That's correct.

Mr. Shibley: They didn't disclose to you the developer they were dealing with at that time?

Mr. Safrance: No, sir.

q Mr. Shibley: But I take it from your letter that you were advancing this proposal in competition with any thought

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2.30 to 2.35 pm
DT

(Mr. Shibley)

of doing a deal with a developer?

Mr. Safrance: That's correct.

Mr. Shibley: And "Proposition 3, The approach ensures the minimum cost possible because Hydro is in effect the developer and manager." Is it not also the minimum cost because it is ~~also~~ cheaper to borrow money for your own account than to involve a so-to-speak a middle man?

Mr. Safrance: That's correct but to further qualify that, if Hydro were to use its normal borrowing stream, in my opinion, the rate that I might have been able to obtain for them ^{as} on a first mortgage bond/was being proposed might have been cheaper.

Mr. Shibley: Now, then, Mr. Safrance, following September 3, did you see Mr. Farmer, the Treasurer of Hydro, on September 9th for lunch?

Mr. Safrance: I am sorry, I can't recall that.

~~Mr. Shibley: That's part of the notation, I might say that was~~

(H-1272 to follow)

July 12, 1973
2.35-2.40p.m.
B.A.

H-1272-1

(Mr. Safrance)

~~I'm sorry I can't read that.~~

Mr. Shibley: That's part of the notation, I might say, that was transcribed for us of the exhibit that is in front of you. There is a handwritten note at the bottom of the last page of that exhibit, "J. Safrance is seeing L. Farmer for lunch" and something else "on 9th ^{SEPTEMBER} ~~September~~, '71"
Do you see that?

Mr. Safrance: I see a notation but I'm not sure what it says.

Mr. Shibley: Well, it's been transcribed, as I say, for us. I am reading from the typed transcription of that handwritten note.

Mr. McCallum: Excuse me, could I ask what exhibit you are looking at so that we can find it.

Mr. Shibley: I'm still looking at exhibit 36 to which is appended two handwritten notes which were relatively ~~at~~ illegible and which were transcribed, I think by your people. Do you see the handwritten portion of it at the very bottom of that second page of handwritten notes.

Mr. Safrance: Yes.

Mr. Shibley: ~~That~~ "J. Safrance is seeing L. Farmer for lunch on" something else "on 9th September, '71".
Did you have such a luncheon meeting with Mr. Farmer?

Mr. Safrance: I had one luncheon meeting in the last two years with Mr. Farmer.

Mr. McCallum : Excuse me, sir, I wonder if I could just interrupt for a moment. I beg you pardon but we cannot make that out of the written work. I admit that there is something typed up on the other side, but, can we --- we may have done it for you but we can't find it on ours.

Mr. Shibley: You did something which you gave to me which you haven't now got.

July 12, 1973
2.35-2.40p.m.
B.A.

Mr. McCallum: Well, if we have it we may not be looking at it, I can't be sure.

Let me come forward, if I may Mr. Shibley, to show you what we are ~~saying~~ saying.

Mr. Renwick: Mr. Chairman, I think I can clear it up. If you will look -- ^e~~there~~_k is an additional piece to the note followed up with me on what ever the date is, and so on. I advised him and then I have some handwritten notes another page on about the two bases.

Mr. McCallum: That's a different one, though.

Mr. Renwick: Either at the very top or the bottom.

Mr. Safrance: Are you referring, sir, to Exhibit 36A?

Mr. Chairman: I don't have them marked as "A" or "B", I have just got them marked as part of Exhibit 36, but they were addendums to 36.

Mr. Renwick: John (Bell) do you see what I mean? That plus this thing is supposed to be that.

And the rest of it is this, the rest of the note.

Mr. McCallum: Mr. Chairman, we are trying to find it. It does show the benefits, sometimes, from our point of view, in being able to ask and getting answers because we did provide it to Mr. Shibley. We don't quarrel with that, but do you know what, we haven't got any copies of it. It is very helpful if you will just hold on half a second so we can see what you are talking about.

Mr. Chairman: Have you got it now?

Mr. McCallum: No, sir, you will have to go ~~ahead~~ ahead without it, I'm sorry.

Mr. Shibley: The witness has it and....

Mr. Chairman: You can have a loan of mine.

Mr. Shibley: All I want to ask you about Mr. Safrance, really, is that Mr. Farmer had done a memorandum which is Exhibit 35,

H-1272-3


July 12, 1973

2.30-2.40p.m.

B.A.

(Mr. Shibley)

September 3, only days before your luncheon was on September 9. And he addressed himself in that memorandum of September 3 to Mr. Dean, whom I believe you know, as to the borrowing needs of Hydro and the uncertainty



(Tape H-1273 follows)

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2:40 - 2:45 pm
CA

H-1273-1

(Mr. Shibley)

~~In that memorandum of September 3 to Mr. Dean, whom I believe you~~
~~know, as to the borrowing needs of Hydro and the uncertainty~~
involved in forecasting availability of funds, and so on. So that I am taking it that as at September 9 when he had his luncheon with you the matters which were the subject of his memo September 3 may have been in his mind at that time, and I am wondering whether any part of that formed part of the discussion between you on the occasion of that luncheon?

Mr. Safrance: No, sir. The subject of our conversation was something entirely different than the proposed financing of the Hydro head office building.

Mr. Shibley: I see. It wasn't he that had alerted you to the fact that ~~passed~~ Well I see your letter and his memo are both dated September 3. Had you had any prior discussion with Mr. Farmer in this connection?

Mr. Safrance: No sir.

Mr. Shibley: All right. So that the luncheon ~~is~~ was unrelated?

Mr. Safrance: That is correct.

Mr. Shibley: All right. Now aside from telling you about the limitations under the bond purchase agreement with the Deutsche Bank, did anyone within Hydro, prior to your discussions with Mr. Nastich, ever discuss with you the difficulties emanating from establishing precedent for future lenders who would require security in addition to the guarantee of the province?

Mr. Safrance: No sir.

Mr. Shibley: Did Mr. ~~Safrance~~ ^{Nastich} bring that up?

Mr. Safrance: No sir.

Mr. Shibley: The difficulty he raised with you was the one referable to the bond purchase agreement, is that correct?

Mr. Safrance: That is correct.

Mr. Shibley: When did you meet with Mr. Nastich?

Mr. Safrance: I am sorry, I can't recall the specific date, but ~~1973~~

July 12/73
2:40 - 2:45 pm
CA

H-1273-2

Mr. Shibley: Would it be in February of 1972? ~~and~~ My information, I might tell you, from Hydro people is that it was within a few days following February 21, 1972?

Mr. Safrance: I would assume that is correct.

Mr. Shibley: All right. And that you met with him on that occasion to discuss ~~the~~ your proposal? Is that right?

Mr. Safrance: That is correct.

Mr. Shibley: Why would Mr. Nastich just simply not tell you by phone and without the need for a meeting that it just wasn't going to work because of the bond purchase agreement?

Mr. Safrance: I don't know.

Mr. Shibley: Did he tell you then that Hydro was not considering self-financing on this project?

Mr. Safrance: I think it was discussed that this would be a possibility, that they may not.

Mr. Shibley: They may not. But did he leave the matter open with you?

Mr. Safrance: Open to the extent that they had made no decision, at the time I had been having my discussions, as to what form of financing they may eventually follow.

Mr. Shibley: Did he tell you then that Hydro was considering proposals from various developers?

Mr. Safrance: I believe that was conveyed to me by Mr. Sissons, ~~and~~

Mr. Shibley: I see, not by Mr. Nastich?

Mr. Safrance: He may have. But I have talked with both gentlemen.

Mr. Shibley: And were you led to believe that no decision had yet been made as at the end of February when you were having the meeting with Mr. Nastich?

Mr. Safrance: That is correct.

Mr. Shibley: Who are the banking representatives of Hydro?

Mr. Safrance: I don't know.

Mr. Shibley: Were you advised that if they were going to finance by normal bonds they would deal with their usual ~~representatives~~ representatives?

July 12/73
2:40 - 2:45 pm
CA

H-1273-3

Mr. Safrance: Most likely.

Mr. Deans: Most likely you were advised, or you were advised that most likely they were going to deal with them?

Mr. Safrance: That is an opinion. Most likely they would have dealt with their normal bankers.

~~██████████~~ (All right.)

Mr. Shibley: Now having told you in late February that they were considering a lease-purchase transaction, did they ~~tell~~ you that once they had been selected he would be advised that ~~financing was available~~.

H-1274-1 follows

July 12th, 1973

2.45 - 2.50 pm

H 1274 - 1

AA

(Mr. Shibley)

tell you that once that developer was selected, he would be advised that financing was available through you.

Mr. Safrance: That's correct.

Mr. Shibley: And were you, in fact, in communication with the Canada Square Corporation, which was ultimately selected for this project.

Mr. Safrance: No sir.

Mr. Shibley: Was any representative of your firm or any associate company of your firm in communication with Canada Square.

Mr. Safrance: I believe any communication was done after the announcements in the newspapers, but I stand corrected on that subject to one of our partners who had followed that up.

Mr. Shibley: All right, so that would be subsequent to August of 1972, but I am more interested, at the moment, in what the communication was ^{AND} ~~then~~ between whom.

Mr. Safrance: I ^{had} ~~had~~ no direct communications with Mr. Moor and I still don't know the gentleman, so I can't offer any other answer other than that.

Mr. Shibley: Well you mentioned some contact being established by someone associated with your organization and someone in the Canada Square organization. Just give us as much as you can, what your information is in that respect.

Mr. ~~Safrance~~ Safrance: Well, to my knowledge, a partner in Wisener and Partners, Mr. Larry Brenzel, who I believe knows Mr. Moor, did have some communication with him. ^{As} ~~to~~ to whether or not it was prior ^{to} ~~or~~ or post announcement on the structure, I am not aware.

Mr. Shibley: In any event, Mr. ~~Safrance~~ Safrance, was the source of funds, namely Metropolitan Trust - Metropolitan Life ultimately made available to Canada Square.

July 12th, 1973

2.45 - 2.50 pm

H 1274 - 2

AA

(Mr. Safrance)

Mr. Safrance: To my knowledge, no.

Mr. Shibley: What you really mean is as far as your information goes, you are not aware that it was.

Mr. Safrance: That's correct.

Mr. Shibley: Was Mr. Candy in touch with anyone within your organization referable to having you get together with Mr. Moog.

Mr. Safrance: No sir.

Mr. Shibley: I have no further questions.

Mr. Deans: May I ask one question.

Mr. Chairman: Mr. Deans.

Mr. Deans: I am not absolutely clear. What was it you did when you were with Hydro?

Mr. Safrance: Well my title was Economic Consulting Officer and my responsibilities involved, generally speaking, special studies in a number of areas.

Mr. Deans: Not financing, ~~was~~ primarily.

Mr. Safrance: Not per se no. That is a treasury function per se in Hydro, as opposed to financial planning.

Mr. Deans: Is your firm currently involved in financing ~~at~~ at this time.

Mr. Safrance: No sir. We are not underwriters. We will look at what we refer to again as special situations in which we are considered to be, or considered to have some expertise in identifying source and demand for capital and ~~the~~ ^{our} knowledge is in the flow of capital, not in the specific area of underwriting.

Mr. Deans: Quite frankly, I am just wondering how you became involved. That's all. I am just wondering how you, when you left Hydro so quickly, you suddenly became involved in the finding of funding for this particular project. I don't quite understand that.

Mr. Safrance: When I left Hydro, I established

July 12th, 1973

2.45 - 2.50 pm

H 1274 - 3

AA

(Mr. Safrance)

my own consulting ~~and~~ firm. One of my clients happened to be a firm called Wisener and Partners, who are investment dealers. My knowledge extends to a variety of areas, including the utility industry and the energy industry in general and I happened to mention to Wisener and Partners that the possibility of a so-called situation could develop sometime in the future regarding the possibility of financing for Ontario Hydro head office, which would be hopefully done outside normal channels of financing, and if that was possible, then we perhaps ~~could~~ could help them.

Mr. Deans: This may be unfair, I don't know.

But in listening to your answers, ~~are you sufficiently~~
~~familiar with~~

H 1275 - 1 follows

July 12/73
2.50 to 2.55 pm
DT

(Mr. Deans)

~~unlike I don't know, but just listening to some of your answers,~~
are you sufficiently familiar with the funding of this type to be able to answer questions in regard to it?

Mr. Safrance: I am not an expert in underwriting.

Now, this is one of the reasons, for example, Wisener and ~~Part~~ Partners, including myself as a consultant to ~~Wisener and~~ Wiseners, would seek the expertise of someone like Merrill Lynch.

Mr. Deans: I see. Okay, well I have no questions.

Mr. Chairman: Mr. Safrance, did you or any of your business associates at any time make any complaint to anyone arising out of the possible loss of business to you?

Mr. Safrance: No, sir,

Mr. Chairman: So, in no way do you consider yourself attached to any of the complaints that we are presently investigating?

Mr. Safrance: No, sir.

Mr. Chairman: Any other questions of --

Mr. Renwick: Just a couple, Mr. Chairman --

Mr. Chairman: Yes, Mr. Renwick.

Mr. Renwick: ~~Maxxxxx~~ Mr. Banks was -- what was his, as assistant general manager, what was his field?

Mr. Safrance: He was responsible for the entire finance branch or division.

Mr. Renwick: He was the predecessor of Mr. Nastich?

Mr. Safrance: That's correct.

Mr. Renwick: I take it that so far as you and your associates were concerned, Wisener and Company and Merrill Lynch, there was at all times during this period of correspondence and discussion with Hydro only the one source that you were referring to and that's the Metropolitan Life.

Mr. Safrance: That's correct.

Mr. Renwick: And when you wrote on exhibit 37, when you wrote to Mr. Sissons, you were making a firm commitment to Hydro with respect to the availability of that money?

Mr. Safrance: Yes, you don't have a firm commitment until the principals in the transaction actually sit down

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2.50 to 2.55 pm
DT

(Mr. Safrance)

and sign an agreement. This letter was intended to ~~xxxx~~ assure Hydro that the funds were available and at their disposal if the terms and conditions were appropriate for both parties.

Mr. Benwick: Yes, but in financial terms, it was an obligation to be honoured unless there was something unusual about the marketing situation at the time that actual documents were signed?

Mr. Safrance: That's correct.

Mr. Chairman: Anyone with any more questions?

Yes, Mr. McCallum

Mr. McCallum: Mr. Chairman, I am not certain whether the witness found anything to quarrel with, point 7A and B of the notes to counsel, Mr. Shibley.

Mr. Chairman: You have got my notes now so you will have to rely on Mr. Shibley.

Mr. McCallum: I appreciate, sir, these are some others that we got ready. I just wasn't certain, for instance -- we understood that Ontario Hydro had said, or Mr. Nastich had said to this witness that he was not considering self-financing on this project and I wasn't sure whether the witness had agreed that -- I thought he said that to him or not and I thought if there was some difference of opinion, you might better have it now than wait later on.

Mr. Shibley: There was a bit of shading, but I don't think it was material. Mr. McCallum: He said -- it was sort of still an open question, it seemed to me. I think that was your answer.

Mr. Safrance: That's correct.

Mr. Shibley: But I don't think it's --

Mr. McCallum: That was my purpose, sir. I did not want to leave unresolved anything that would be in your mind and represent a conflict. I was going to say to you, you could go right ahead and use this --

Mr. Shibley: As far as I am concerned, Mr. McCallum, the ~~xxxx~~ evidence of this witness is substantially in ~~xxxx~~ accord with

July 12/73
2.50 to 2.55 pm
DT

(Mr. Shibley)

the information provided to me by Hydro.

Mr. McCallum: Thank you very much, sir.

Mr. Chairman: Thank you very much, Mr. Safrance,

for being with us.

Mr. Safrance: You are welcome.

Mr. Chairman: Now, gentlemen, that brings us to the end of the witnesses that Mr. Shibley has present preparation for.

Mr. Deans: We should call Mr. Shibley?

Mr. Chairman: Well, he would be a good man to call.

figured

We had ~~figured~~ that we would only be on this morning. Now, we have taken the better part of the afternoon and Mr. Shibley suggested to me at noon that we should not meet until Wednesday. Now, I am in agreement with that if the committee are likewise in agreement with that. *Mr. Newman!*

(H- 1276 to follow)



July 12/73
2:55 ~ 3 pm
C.B.

~~(Mr. W. Newman)~~
~~(Mr. W. Newman)~~

~~No, I'm in agreement with that if the committee are likewise in agreement with that Mr. Newman.~~

Mr. W. Newman: Nothing, Mr. Chairman, except ^{that} when we do set dates in the future, it makes it awkward for some of us who have other responsibilities with government, not only of our own.

Mr. Chairman: I know.

Mr. W. Newman: If we had some idea. Will we be sitting the week after next on Monday, Tuesday, Wednesday and Thursday and maybe Friday, or ~~some~~

Mr. Chairman: As I see it now, Wednesday and Thursday of next week, and of the following week, Tuesday - I'm sorry, Monday, Tuesday, Wednesday and Thursday. ~~and~~

Mr. Deans: Monday.

Mr. Chairman: Well yes, unless it is changed but you are all aware of the reasons for the changes and how awkward it is. I think there is a certain amount, by necessity, of playing it by ear. Now I regret it, ~~and~~ the other point to mention is that Mr. Moor is the one we are planning to see next, on Wednesday. There was some request that we should, if we were going to have the other developer in, that he should be next. But that doesn't fit in quite to our plans and if by any chance again that there were some questions that Mr. Moor's counsel wanted to raise by reason of the fact that;

Mr. ^{Zwig} ~~Moore~~ is it?

Mr. Shibley: Zwig.

July 12/73

2:55 -3 pm

C.B.

Mr. Chairman: Zwig, may follow, I think that can be worked out. But it is planned that we will proceed with Mr. Moor and that will be on Wednesday, unless I hear violent objections from the committee. I don't consider your objection violent, Mr. Newman.

Mr. W. Newman: No, mine was not violent, I just wanted to know where we were going.

Mr. Shibley: NO, Mr. Newman is ^{never} ~~was~~ violent.

Mr. Chairman: Then we are adjourned until next Wednesday at 10 a.m. I hope you all have a very happy weekend.

The committee adjourned at 3 o'clock p.m.

APPEARANCES

Committee members:

J.N. Allan
J.E. Bullbrook
I. Deans
M. Gaunt
L.C. Henderson
R.G. Hodgson
W. Hodgson
J.P. MacBeth (Chairman)
W. Newman
J.A. Renwick
G.W. Walker

Clerk of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Ontario Hydro counsel:

Pierre Genest, QC
James McCallum, QC

Canada Square counsel:

Douglas Laidlaw, QC
Elair Cowper-Smith

Economist, Wisener and Partners, Co. Ltd:

J.G. Safrance

INDEX TO EXHIBITS

<u>Exhibit</u>	<u>Page</u>	<u>Description</u>
185	1269-2	Letter - August 5, 1971 - From J.A.S. Penny, Royal Securities Corp. Ltd. to J.G. Safrance, Wisener and Partners Co. Ltd. re Negotiations with Ontario Hydro.

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Wednesday, July 18, 1973

1277-1279

LEGISLATURE OF ONTARIO

SELECT COMMITTEE - HYDRO HEADQUARTERS

July 18, 1973
10.20-10.25 am
W.H.

B-1277-1

The committee met at 10:20 a.m. in the Members' Board room.

Mr. Chairman: Gentlemen, I apologize to you all for the delay. I was in the room here about ~~10~~ 10.20. Then I had a notice that Mr. Shibley wanted to speak to me and, as I say, I apologize for our delay in arriving here this morning and for what I am about to say.

At Mr. Shibley's suggestion, a meeting was held late yesterday between committee counsel and the Premier. As a result of matters discussed, the Premier has decided that it would be appropriate to appear before the committee and has requested that he be the next person to be heard.

Now, on that basis, and because Mr. Shibley needs some preparation to hear the Premier and to prepare for an examination of him and because of the Premier's commitments in the way of Cabinet meetings and items of that nature, so that he can clear his calendar, Mr. Shibley and he are both requesting and I am requesting you that we adjourn today Monday. So when I say I am apologizing to you, I am apologizing for being late this morning and for my apologizing for asking you to adjourn today. I will be back on Tuesday and proceed at that time.

Now I already hear Mr. Deane and Mr. Deane.

Mr. Deane: You sure do!

Mr. Chairman: ... and I can well understand his reason for them and he has great justification. But that is the way things ~~at~~ stand and I say ~~the~~ I apologize and request that you do that.

Mr. Renwick: Mr. Chairman, may I ask one or two questions?

Mr. Chairman: Yes sir

July 18, 1973
10:00-10:25 am
11

Mr. Lemmon: Has there been any indication why the Premier has taken the initiative to indicate that he believes he should appear before the committee, and that he has chosen this particular time to do so?

Mr. Thompson: Mr. Shibley have you any comment on that?

Mr. Shibley:

Mr. Shibley: So far as I know, the Premier had a meeting with the Premier yesterday to discuss the evidence with him and it is as a result of the meeting I had with the Premier that he has asked that he not be permitted to give evidence to the committee but that he be the first witness. I don't think it is in anyone's interest to go beyond that point at this stage as to the nature of the Premier's evidence.

Mr. Thompson: I would like to ask this question. Had counselling consideration of the evidence up until the point where the point where he was going to advise the committee that the Premier should be called, as has been the case with other witnesses? Or this as initiative being taken by the Premier?

Mr. Shibley: He said that he was a witness to the Premier's decision to call him to give evidence. I am of deciding that I should have a meeting with him to discuss certain evidence and his

Mr. Thompson: That you wanted to discuss with him the evidence that he was going to give. Is that correct?
Thank you Mr. Shibley.

I took the initiative to request a meeting with him. I discussed certain evidence with him that I considered important to review with him and permit his evaluation of this evidence and having done so, the Premier then took the initiative and I want that perfectly clear that he said first that he wanted to be the first coming here but as a matter of fact he was not the first

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(Mr. Shibley)

indication from me that he should do so. It is his decision and his alone and he has since then also decided that he should be the next witness in all the circumstances and, again, that's his decision.

Mr. Bullbrook: That's the key point. I say this most respectfully that isn't the Premier's decision. That's the decision of this committee. When the Premier comes here or not of course he is his own decision. I think it is what I felt the terror of our attitude was. ~~Notwithstanding my remark, I have no objection to the Premier's decision. I have no objection to the Premier's decision. I have no objection to the Premier's decision.~~

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(Mr. Shibley)

in terms of my discussion with the Premier. I considered it timely to discuss evidence with him when I did and, as I say, I don't consider that that should be translated into anything other than what I've been doing for everyone.

In terms of the timing, I want to assure you that the evidence will all be considered in the context of its totality, not only the evidence of the Premier, but the evidence which has gone before and that which comes after.

It's my own view that it would be certainly more appropriate and, in my own view, more fair that the order that should now follow is for the ~~Ex~~ Premier to be the next witness. That's my own view. It's a fact, also, that I invited the Premier to consider whether he should be the next witness when I first met with him about the matter so that you can take it that, even to that extent, rather than imposing his will on ~~xx~~ me, or this committee, I invited ~~x~~ him to consider whether he should be the next witness. He has considered it and has now requested, and it is a request that I think this committee can and should accede to, that he be the next witness.

~~xxxxxx~~

Mr. Renwick: Mr. Chairman, I content with that explanation of it. Thank you very much.

Mr. Chairman: Thank you, Mr. Renwick. Mr. Bullbrook, I didn't know about this development until this morning ~~and~~ when I spoke to Mr. Shibley and the Premier in regard to it, my thought, of course, was with this committee that I had asked ~~them~~ ~~xxx~~ to come in here today at some inconvenience to themselves, ~~and~~ that we should proceed with Mr. Moog ~~and~~ I suggested why not proceed with Mr. Moog ~~as~~ or one or two other witnesses that may be available. The reply to that was from Mr. Shibley that, no, he was not prepared to do it in that way and he wanted some preparation. He thought that the ~~Ex~~ Premier should be next and he wanted ~~x~~ some time to prepare for it. Despite the suggestions that I made that we should try and find a way to

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(Mr. Chairman)


continue, At was Mr. Shibley that suggested, no, it would be best not to.

Mr. Renwick: Mr. Chairman, I have one other question. Is it now my understanding that Mr. Moog will follow immediately after the Premier, or is that a matter that is still open?

~~Mr. Chairman: I have no further questions to ask at this time.~~

~~Thank you.~~

(Tape H-1279 follows)



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Mr. Shibley: I suppose that I could be substantially ready to go on, but I think that two things result from a hurried preparation. One is that I may not be as complete as possible and I think it's important that I be carefully briefed for this examination - I doubt anyone would question that. The Premier himself has a number of appointments tomorrow. I don't know what his ability would be to be available. But in ~~the~~ fairness to him also, this is a relatively recent development, and I think that he should have some time to understand and prepared for the areas of examination to be emarked upon. So that really it's a combination of my own requirements and his that I'm asking you not to press for a hurried attendance of the Premier. I think it's wrong. Certainly it would be unfair to him to have that happen, and from my point of view I would prefer the additional opportunity to prepare.

Mr. Chairman: I think he has Cabinet today, too, Mr. Bullbrook. I think that's one of his problems.

Mr. Bullbrook: Well, I didn't anticipate that he would be coming ~~to~~ today because of the fact that counsel has already said that he required some degree of preparation. I wondered whether the intervening availability of, say, ten or ~~twelve~~ twelve hours was sufficient for our counsel. He says it isn't. As a motivation for all of us, ~~perhaps~~ in expressing either directly or thinking of it at lots time is that we had hoped that we could get out of here. I know myself that trying to log in advance what might be ~~was~~ happening I had hoped that perhaps with some good fortune and a minor participation on my part, that we might get out of here a week from Friday. But the focal point, of course, is if we could get him in tomorrow, if we could get the Premier in tomorrow, we might well consider sitting on Friday which would give us at least two days this week that we anticipate. However, in the response of counsel, I take it that we have to, in effect, oblige the Premier.

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Mr. Chairman: Gentlemen, I apologize again to you.
I am as disappointed as anyone, but that is the story, and with
your approval I will adjourn it until 10 o'clock on Monday
morning next.

The committee adjourned at 10:35 a.m.

APPEARANCES

Committee members:	J.N. Allan
	J.E. Bullbrook
	I. Deans
	M. Gaunt
	L.C. Henderson
	R.G. Hodgson
	W. Hodgson
	J.P. MacBeth (Chairman)
	W. Newman
	J.A. Renwick
	G.W. Walker
Clerk of the committee:	Paul Moore
Committee counsel:	R.E. Shibley, QC
	J.P. Bell
Ontario Hydro counsel:	Pierre Genest, QC
	James McCallum, QC
Canada Square Counsel:	Douglas Laidlaw, QC
	Blair Cowder-Smith
	G.D. Finlayson, QC

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LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Monday, July 23, 1973

Morning session

July 23/73
10.06-10.10.10 a.m.
E.M.

LEGISLATURE OF ONTARIO

SELECT COMMITTEE - HYDRO HEADQUARTERS

The committee met at 10:06 o'clock, a.m. in the members' board room.

Mr. Chairman: Ladies and gentlemen, I call the committee ~~meeting~~ to order. ~~Mr. Chairman,~~ Mr. Premier, I am not going to start off by saying I am happy to see you here but on behalf of the committee I certainly welcome you. I hope perhaps the fact you are here may allow us to cut through some of the evidence we have heard and some of the evidence we had expected to hear, so there may be some glimmering of hope that we may end this committee's work before too long. So I say "welcome" in the idea that you can be of assistance to us, ~~and~~ I understand you have a statement, but I always come to the embarrassing part about the oath of office, being a member of the House whether we should just take it without the oath, but I think since we have given our colleague, Mr. Arthur Evans, the oath, it might be wise to follow the same procedure if you are agreeable, sir.

Yes, Mr. Newman?

Mr. W. Newman: Mr. Chairman, I would like to speak on this point. This is a select committee dealing with the matter before it and every member of this Legislature when he is elected is sworn into office and takes an ~~oath~~ oath at that time. Just because I ~~do~~ feel we made one mistake by swearing in Mr. Evans, I don't think when a fellow member of the Legislature comes before us we should be swearing him, especially in this case I think it is an affront to the ~~Premier's~~ office, I think when he took his oath of office as a ~~member~~ member of this Legislature that was sufficient.

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Mr. Chairman: Mr. Newman, I certainly appreciate those thoughts, they ~~are~~ ^{akin to} are my own.

Mr. W. Hodgson: I would like to add to what Mr. Newman says and agree with him 100 per cent ---

Mr. Bullbrook: May we hear what the Premier's ~~says~~ ⁱⁿ response might be?

M.R. W. Hodgson: Just because we made that one mistake by swearing Mr. Evans in, which I ~~feel was~~ ^{that we make} a mistake, there is no need of ~~making~~ two mistakes. Two wrongs don't make a right.

Mr. ~~Chairman~~ Chairman: Well, as you recall, I asked Mr. Evans at the time.

Mr. Henderson: I support ~~those~~ ^{those} statements.

Mr. Chairman: All right. Mr. Renwick?

Mr. Renwick: Well, Mr. Chairman, it would appear to me that as usual we are getting hung up on a procedural problem first thing in the morning. It is perfectly clear that the select committee is hearing witnesses; there is no distinction made between the witnesses which appear before this committee, whether they are members of the Assembly or any other body, and I would ask that, as I am sure the Premier would be quite happy to do, to give his evidence under oath in the same manner that all witnesses before this committee have given their evidence.,

Mr. Bullbrook: I am sure the Premier is not reticent at all, to take the oath.

Mr. W. Newman: ^{Chairman,} ~~Chairman~~, my point was the fact that ~~if~~ he is a member of ~~the~~ the Legislature, he has taken an oath of office and I really think it is a bit of an affront to proceed with it again, that is all.

Mr. Chairman: Mr. Premier, have you any comments on this procedural matter?

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Hon. Mr. Davis: Mr. Chairman, I don't like to get involved in procedural discussions, I can be sympathetic with all points of view that have been expressed.

Mr. Bullbrook: Well, in view of that response, may I add my comments to support the position of Mr. Renwick. I don't mean to in any way detract from the thrust of what Mr. Newman and ~~Mr.~~ some of his colleagues have said, but I think it is incumbent upon us to let the public feel that every witness before this tribunal is treated in exactly the same fashion.

Mr. W. Hodgson: Every witness wasn't treated in exactly the same fashion before they came here, as Mr. Newman pointed out. We as members of the Legislature have already been sworn, we ^{have} taken our oath of office, and I think that should be sufficient.

Mr. Deans: Mr. Chairman, surely it would be easier for you simply to administer the oath and get the meeting under way.

Mr. ~~Mr.~~ Chairman: Well, I think there is some dignity to the office here; there is some dignity to the office as you ---

Mr. Bullbrook: I don't think the taking of the oath in any way detracts from the dignity of the office, I think that is absolutely essential.

Mr. Chairman: But as far as the ~~oath~~ ^{oath} is concerned, I am looking at this as a branch of the House or a committee appointed by the House and in the House itself a member's word is taken as being his word. ~~Now this is a~~

(Tape H-1281 follows)

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(Mr. Chairman)

~~pointed by the House, and in the House itself. As a member's~~
~~word is taken as being his word.~~ Now, this is a branch of
the House and, as you know, it gave me some embarrassment to
ask Mr. Evans to take the oath; he said he would and that ended
it at that point.

Now, some of the members, as I'm sure they have -
Mr. Newman and Mr. William Hodgson, have suggested that here
they don't think it's proper that the oath should be administered.
I'm trying to take a consensus here. Mr. Allan, have you any
thoughts on the matter, sir?

Mr. Allan: Well, Mr. Chairman, my thoughts would
be that I think it's ~~only~~ entirely up to Mr. Davis.

Mr. Chairman: All right.

Hon. Mr. Davis: Thank you very much, Mr. Allan.

Mr. Chairman, I don't want to make any lengthy observation on
this matter. I am quite prepared, obviously, to take the oath.
I say, with respect, that while I think this committee wants
to and should treat witnesses the same, I do say to you, sir,
right at the outset, with respect, not myself, but the Premier
is not the same as every other witness. I think it must be
stated and I have made this point to your committee counsel,
that I was the sole person, with the support, of course, of my
colleagues on both sides of the House when they voted for the
motion, who made the determination to have this select
committee. I think it must be pointed out at some point, Mr.
Chairman, that I am in something of a unique position and I
am sure that the members on this select committee, regardless
of the parties they represent, will understand the unique
position that a Premier finds himself in in a discussion of
this kind. To make it easier for you, sir, and to make it
easier ^{for me} and I do appreciate the thoughts of some of my
colleagues expressed on ^{the} a matter of the oath. I have always

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considered it my responsibility as ~~with~~ a member of the House to tell the truth. I must confess to the ~~member~~ for Sarnia, *and* the member for Riverdale, that I think it is fair to state that as head of government I have always attempted to put the position of ^{the} government in the most positive light, which I think is part of the political process. However, to make ~~it~~ it easier, I shall take the oath, Mr. Chairman, but I say with respect to all members here, that the Premier of the province, by the very nature of his office, I think, on some matters to be discussed, cannot be considered just another ~~witness~~ witness.

Mr. Chairman: Well, I agree with that, Mr. Premier.

That has been my thought all the time. And, as I said, I was reluctant to see you come, but knowing that you had good reason to be here, as I say, I welcome you. ~~And when you are here, I welcome you.~~

WILLIAM G. DAVIS, sworn

Mr. Chairman: Now, sir, you have a statement, I

believe, which you wish to make and we would be very pleased to hear that now.

Hon. Mr. Davis: Yes, Mr. Chairman, I have a very

brief statement to make. I would, at the outset, like to extend my thanks to you and to your counsel, Mr. Shibley, and to all members of the committee for the courtesy and the consideration that you have extended to me, sir, in postponing those proceedings which were scheduled for last week, in order to permit me to appear before you at this time. I appreciate ~~this~~ this especially since I am sure that these arrangements were made at some personal inconvenience to yourselves.

Mr. Chairman, since this committee began its work two months ago, I have considered the question of whether it would be appropriate for me to appear here and whether there were any matters in which I ~~could~~ could be of assistance to this committee.

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(Hon. Mr. Davis)

Recently, it had become increasingly apparent to me that it might be desirable for me to appear here personally in connection with some of the matters that had been raised.

A week ago, on the afternoon of Tuesday, July 17, I met with committee counsel, at his request, and he provided me with some information of which I had not been aware. The next morning I communicated with you, sir, and with Mr. Shibley to indicate that in view of my discussion with committee counsel, I ~~would~~ would appreciate the opportunity of being the next person to appear before you.

Mr. Chairman, while I do not wish to in any way limit or usurp the functions or responsibilities of your committee counsel, I would like to briefly touch on two or three of the general areas that I know are concerning you in your investigations.

One of the underlying questions that this committee must consider has to do with the rights of persons to engage in business dealings with the government.

Most of us in public life have a wide circle of friends and acquaintances from a wide variety of backgrounds and occupations. I would venture to say, Mr. Chairman, that few men in public service are not acquainted with people who are engaged in one way or another in business dealings with the government.

The problem that is posed by personal friends doing ~~business with the government is something that faces everyone in public service and it~~

Tape H 1282 follows

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(Hon. Mr. Davis)

~~by personal friends later~~ business with the government is something that faces everyone in public service and it might be of some assistance to you, and to the members of this committee, to know my personal approach to this matter.

I have not followed the practice of admonishing my personal friends that they should never have any business dealings with the ~~govt~~ government. I trust that you will agree that such an approach would be both unfair and unreasonable.

However, I have always declined to discuss these matters with them and have never assisted them in any way in any dealings they might have. I am sure that you will agree, Mr. Chairman, and members of the committee, that to do either would be inappropriate for anyone involved in public service.

Obviously, another question that faces this committee, has to do with the personal friendship that I have with someone whose profession virtually requires that he engage in business dealings with the government and with government agencies.

I have never sought to diminish or deny the fact that Mr. Moog is a friend of mine. Our friendship began before I entered public life. Our families have travelled and vacationed together and our wives have been good friends for many years.

Last Tuesday I ~~have~~ learned for the first time from committee counsel that, on one of these occasions during a brief vacation in Europe in the summer of 1971, Mr. Moog had occasion to make an ~~enquiry~~ enquiry in connection with some potential financing for a new Ontario Hydro headquarters building in the event that ~~Ontario Hydro~~ Ontario Hydro decided to proceed with the project and Canada Square were to be involved in making a proposal.

This happened, Mr. Chairman, during the course of a conversation ~~with~~ which did not take place in my immediate presence and I was not aware that Mr. Moog had made this ¹/_{enquiry} until information was given to me by committee counsel last week.

Later, that summer, Mr. Chairman, on a social occasion

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and in a casual conversation, Mr. Moog referred to the fact that he had been approached by Ontario Hydro in connection with their new headquarters building. I declined to discuss the matter with him and at no time from that day until after the signing of the contract on November 1, ~~1972~~ 1972, did Mr. Moog speak to me about his dealings with Ontario Hydro.

Finally, Mr. Chairman, I want to say to you, and to this committee categorically, that at no time have I, nor to my knowledge, has anyone on my behalf, made any representation, issued any instruction, or given any direction to Mr. George Gathercole, Mr. Candy, anyone at Ontario Hydro, or anyone else, that could be construed, in any way, to be in favour of any person in their dealings with Ontario Hydro in connection with this matter.

Mr. Chairman: Thank you very much, Mr. Premier.

~~Now we have the procedure of having counsel ask some questions~~
and, I think, Mr. Shibley you are prepared to proceed.

Mr. Shibley: Yes, I am, sir.

Mr. Chairman: Mr. Premier, I understand that you are prepared to have a few questions asked.

Hon. Mr. Davis: Is that your terminology, ~~with you~~ Mr. Chairman, or Mr. Shibley's?

Mr. Chairman: That's my terminology. I hope it wouldn't be too long. Mr. Shibley has a way of asking very searching questions and being very aggressive. As I say, I'm hoping ~~we~~ that some day we can end these hearings and I hope your appearance will help do that more quickly than it might otherwise do.
Mr. Shibley.

Mr. Shibley: I think one of the questions I can eliminate, sir, is what is your occupation. I would, however, like to take you back a little bit and establish the chronology of your positions in government, Mr. Premier. I understand you became a member of the House in what year?

Hon. Mr. Davis: Nineteen fifty-nine.

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Mr. Shibley: And Minister of Education when?

Hon. Mr. Davis: Nineteen sixty-two.

Mr. Shibley: When did you cease to be Minister of Education?

Hon. Mr. Davis: I ~~was~~ was sworn in as Premier on March 1, 1971, I think that is correct, so I would assume I ~~would~~ ceased to be Minister of Education either the same day or the day before but very close to that. I'm not sure of the actual technical details, Mr. Shibley.

Mr. Shibley: Very quickly, Mr. Premier, I take it from an exhibit, which is ~~an~~ exhibit 3 before these proceedings, that in 1969 you became somewhat familiar with the ambitions of Ontario Hydro respecting a head office building in that you were then inquiring about extra space in that building for use by the Ministry of Education. Is that right?

~~Hon. Mr. Davis: Yes, I think I remember having read that is not a bad idea. The ministry was located at Belton.~~

(Tape H-1283 follows)

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Hon. Mr. Davis: Yes, Mr. Shibley, my memory here really is not that helpful. The Ministry was located at Eglinton. There was some thought that a number of the Ministry officials would like to return downtown. There was some discussion, as I recall, as to whether we would be part of the new Macdonald complex. The discussion really didn't amount to very much and, obviously, we moved to Macdonald complex and nothing materialised with respect to the possibility of surplus space at the Hydro.

Mr. Shibley: All right. Now then, in March of 1971, and in particular on March 3 of ~~1971~~ that year, Exhibit 32 indicates that Mr. Sissons

Mr. W. Newman: Mr. Chairman, does the Premier have a copy of these exhibits?

Mr. Chairman: No, I am asking Mr. Moore to give any of these exhibits that may be necessary for the ~~Premier~~ Premier to look at.

Mr. Shibley: Mr. Sissons of Ontario Hydro, and I might tell you, sir, that Mr. Sissons is general manager responsible for premises, accommodation and so on, issued a memorandum and, in part, ~~in~~ it reads

Mr. Chairman: Exhibit 32 is the letter to Mr. Safrance.

Mr. Shibley: It's 132, I'm sorry.

Mr. Chairman: 132.

Mr. Bullbrook: Before we continue, would it be possible for members of the committee, or it is anticipated that we might have a copy of the Premier's opening statement?

Hon. Mr. Davis: Yes, we could, Mr. Chairman.

Mr. Chairman: Are there any extra of that, Mr. Shibley?

Mr. Shibley: I only have the one copy received recently.

Mr. Chairman: We can get some copies made. Mr. Moore, if you would get some copies of the Premier's opening

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statement made, please?

Mr. Shibley: Sir, if you're looking at the exhibit, March 3, 1971, it's a memo from Mr. Sissons to Mr. Gordon. In the third paragraph on the first page, "Perhaps we could now get an assurance from the Government that financial and economic conditions being appropriate we can count on being able to go ahead with the new building late this year or early next, subject to more exact timing."

And then on page 2, the last paragraph; actually the very last line: "The Chairman feels he can do nothing till the week after next."

Now, Mr. Premier, from information you have provided to me, I noted that you had a luncheon with Mr. Moog on March 3, 1971, and for matters of record I want it established whether or not there was any conversation between yourself and Mr. Moog on the occasion of that luncheon referable to the head office building.

Hon. Mr. Davis: Mr. Shibley, I'm not sure that that's on information provided by me. I'm not sure that my diary, in fact, shows, I think, that there was perhaps a tentative luncheon arranged. I can only say that if there was a luncheon and if, in fact, I met with Mr. Moog on March 3, 1971, I assure you there was just no discussion of Ontario Hydro at all.

Mr. Shibley: And you have no information at the present time that Mr. Moog in any way was in communication with Mr. Sissons or anyone in Hydro ^{with Mr. Sissons} ~~on~~ that particular memorandum?

Hon. Mr. Davis: That is correct.

Mr. Shibley: Now then, the memorandum also references that "the Chairman feels he can do nothing until the week after next." And I wish to tell you, sir, that you did have a meeting and the only meeting of which I have noted, was one on April 7 with Mr. Cronyn, Mr. Gathercole and yourself. Did that meeting in any way have to do with the Hydro head office building?

Hon. Mr. Davis: In no way at all, Mr. Shibley.

Mr. Shibley: I take it that was do with Task Force Hydro?

Hon. Mr. Davis: That is correct.

Mr. Shibley: And did the ~~EM~~ Chairman, Mr. Gathercole, at any time pursue the question of an assurance from government that financial and economic conditions were appropriate for them to proceed as the March 3 memorandum suggested?

Hon. Mr. Davis: Mr. Shibley, not at that time. I think when we get to the, as you will, to the discussion in -- at Pickering, that perhaps that might be. But there ~~was~~^{is} nothing certainly at that time.

Mr. Shibley: I just want to clear the desk, Mr. Premier, as to communications within ~~the~~ the period March and April, at this time.

Hon. Mr. Davis: There was no communication to my recollection between myself and the Chairman of Hydro in the March-April period.

Mr. Shibley: Nor would there have been any communication, I take it therefore, on your behalf by anyone within your office?

Hon. Mr. Davis: No, that would be correct.

~~Mr. Shibley: I take it that was do with Task Force Hydro?~~

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(Mr. Shibley)

~~been any communication? I take you therefore, on your behalf
by anyone within your office?~~

~~Hon. Mr. Davis: No, that would be correct.~~

Mr. Shibley: Well then, I'd like to move along then Mr. Premier to the month of June, 1971 and I ask to have produced to you what is Exhibit 13, a memorandum of Mr. Candy's dated June 14, 1971. Now portions of this memorandum may be familiar to you because it has been reproduced in the press, but you will notice the second last paragraph on that letter. This I might tell you, references a meeting with Mr. Gerry Moog on Friday, June 11 wherein they discussed the possibility of having him finance and construct a building on a lease-back proposition. The Commission's position was explained to him by Candy. Then the second-last ~~paragraph~~ paragraph: "He says that he is going over to Germany next month as an advisor to the Premier of Ontario to ~~arr~~ arrange further financing for the Province.

"Mr. Moog seems very well informed and I think quite sincere." Now just stopping there Mr. Premier, I'd like to review with you the circumstances surrounding the making of that observation by Mr. Moog to Mr. Candy as at June 11, 1971. Did you in fact make a trip to Europe during the summer of 1971?

Hon. Mr. Davis: Yes I did.

Mr. Shibley: And was that trip made in the company of Mr. Moog?

Hon. Mr. Davis: It was made in the company of Mr. Moog, my wife and his wife.

Mr. Shibley: Would you establish the precise period within which the vacation trip was made.

Hon. Mr. Davis: Yes Mr. Chairman, the precise ~~period~~ was August 8, a Sunday and returned the following Sunday, which I would assume would be August 15.

Mr. Shibley: Yes.

Hon. Mr. Davis: Right.

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~~Mr. Shibley~~ Mr. Premier the plans for that trip,

however, must have been made some time earlier.

Hon. Mr. Davis: Yes. Mr. Chairman, Mr. Shibley, perhaps I will try to be as helpful as I can related to -- I don't know the circumstances of Mr. Candy's memorandum, nor the circumstances of Mr. Moog's discussions with Mr. Candy, but I perhaps can be of some assistance to you and to the committee as perhaps the reason why there is some reference in that, ^{THAN} ~~then~~ leading up to the trip itself. I think it is fair to state Mr. Chairman that there had been discussions primarily between my wife and Mrs. Moog related to the possibility of us some time going to Germany. I think it is fair to state and it is well-known by members of this committee the Moog family lived in Germany for a number of years. I think the committee should know that part of my wife's interest stems from the fact that she did her graduate work in that country ~~just~~ just south of Munich. I think that trying to remember as best I can what might have precipitated that remark of Mr. Moog's to Mr. Candy, was the general discussion for really some months almost prior to that of the possibility of a trip and then some time, I observed to Mr. Moog that in one area at least, and there will be others who will say in many areas, my knowledge of total government was less than complete and indicated that part of the trip might involve a visit to Munich to discuss not the borrowings, because this has never been the responsibility of the Premier, nor to arrange for any financing, but to have a general discussion with representatives of the banking community in Munich as a part of the trip that we would take. I tell you^a very personal reason as well was that both my wife and I were anxious to go to Munich because this was as I say, basically just south of there where she spent some time and would have liked to have revisited it. I think it is fair to state Mr. Chairman that perhaps that was a part of the rationale for Mr. Moog's observations, if there were observations, and as I say I wasn't there, I can't comment but there is no question that I did mention to Mr. Moog the possibility

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of talking to probably the Deutsche Bank people when I was there.

I want to make it very clear that Mr. Moog has never been a special advisor, he has never been involved to my knowledge in negotiations with the Deutsche Bank or any other bank, nor has he acted as special advisor to the Ministry of the Treasury or Economics and Intergovernmental affairs. ~~I want to keep the record perfectly clear that he was not in an advisory capacity and I don't know whether I mentioned this or~~

Tape H 1285 follows

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(Hon. Mr. Davis)

~~interrupting the speaker~~ I think just to keep the record perfectly clear, that he did act in an advisory capacity, and I don't know whether I mentioned this to you the other day or not, Mr. Shibley, but I ~~tried~~ ^{tried} to remember everything over the weekend ~~and~~ I can't tell you the date of this, but that he was part of a committee, under the chairmanship of Earl Brownridge, who were exploring the possibility of a museum of science and industry for Ontario, which suggestion actually emanated from the late Oakley Dagleish, who suggested to me that this would be a great thing for the Province of Ontario to do.

I asked Mr. Brownridge and a number of other gentlemen and ladies to serve in this capacity. So, to the extent that Mr. Moog was part of that committee, I guess one would have to say that he, at one point, did advise.

I think it is also fair to point out, not to digress, that the committee came in with the positive recommendation which, in its own way, became the Province of Ontario's centennial project and the Science Centre is something of an indirect result of Oakley Dagleish's great interest in it. Flowing from that to Mr. Brownridge's committee, the fact that the Province of Ontario was looking for a centennial project, that is partially the reason for the Science Centre.

So to that extent he was an adviser. It became, I think, Mr. Shibley, relatively apparent, to me, at least, and I must confess, perhaps to my wife, not so much to Mr. and Mrs. Moog, that the holiday we planned in August of 1971, by the nature of events, would have to be shortened.

Mr. Shibley: Before you go on, Mr. ~~Former~~ Premier, excuse me for interrupting, just to complete the communications between yourself and Mr. Moog, vis-a-vis your intention, if the opportunity presented itself, to visit a bank in Munich and ~~and~~ ^{probably} the Deutsche Bank, did you indicate to Mr. Moog that you wished him to sit in and give you the benefit of ~~seeing~~

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Hon. Mr. Davis: Yes, Mr. Shibley ~~now~~ ^{now} I'm not ~~now~~!

I think to say "to give me the benefit" - I think I did ask him if he would like, ~~to~~ if we did it, to join us for ~~and~~ informal discussions we had. Yes, I think that would be fair.

Mr. Shibley: Was anything said by you to him respecting obtaining the benefit of his ideas?

Hon. Mr. Davis: Well, I don't recall that and I'm not sure, really, what the rationale would be. I certainly - he would have a point of view - because at that point I'm not sure just really what we were going to cover in our discussions.

Mr. Shibley: Well, Mr. Moog was someone who was familiar with the financial markets in Europe?

Hon. Mr. Davis: Mr. Moog, I would think it is fair to state, Mr. Chairman, ~~he~~ is familiar with the financial markets both here and in Europe. I don't think there is any question about that.

Mr. Shibley: Can you help us pinpoint the time when that exchange took place?

Hon. Mr. Davis: I can't. I endeavoured to do this over the weekend. I can only say that there is no way that Mr. Moog, if he did, could make reference to Mr. Candy in a way that might be interpreted in this fashion by Mr. Candy unless I had said this to him prior to it. I mean it ~~is~~ obviously ~~it~~ had to be some time in May.

Mr. Shibley: Right. And your plans for this trip ~~would~~ would have extended that far back?

Hon. Mr. Davis: Our plans for this trip really in tentative form, Mr. Shibley, would have - discussion of it would have ~~extended~~ extended back well before that.

Mr. Shibley: You mentioned in your opening statement, ~~my~~ sir, that you have been ~~long~~ friends with Mr. Moog for many, many years and I just want to get a little elaboration on that from you.

I take it that your friendship with him goes back to the days of your practice in Brampton; is that right?

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Hon. Mr. Davis: That is correct, Mr. Shibley.

Mr. Shibley: And before you entered political life whatsoever?

Hon. Mr. Davis: Yes. I thought about this.

I think that is true, although I was trustee on the Brampton Public School Board. I think this was even before that.

Mr. Shibley: We won't hold that against you.

Hon. Mr. Davis: I'm not sure but it's certainly before I entered provincial politics.

Mr. Shibley: And at a time when he, for his part, was not large in the building field?

Hon. Mr. Davis: Well, I would have no knowledge as to the extent of his involvement in any field of business. I just know what he was participating in in Brampton.

Mr. Shibley: I see. And, so that, your friendship evolved over a number of years - 14 in all; is that correct?

Mr. Davis: That would be 1957-1958. I would say 14 to 15 years.

Mr. Shibley: And as you grew politically, he grew as a builder?

Hon. Mr. Davis: Yes.

Mr. Shibley: Is that correct?

Hon. Mr. Davis: Yes. Not in the way you are suggesting - I mean, you are not suggesting.

Mr. Shibley: Well, I think it is of interest to know that this relationship or friendship is not something that resulted from the fact, or at a time when you were already prominent in politics and he was already prominent in the business world. That is correct, isn't it?

Hon. Mr. Davis: That is correct.

Mr. Shibley: Yes. Now, then,

Mr. Chairman: Mr. Premier, you were

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{Mr. Chairman}

~~{HxxxxMxxxDavis}~~

Mr. Premier, you were talking about cutting your holiday short. Is there anything particular you wanted to say?

Hon. Mr. Davis: I just want to make it clear, Mr. Chairman, that the plans were altered somewhat because of events that were to occur that fall. As a result, we did not go to Munich and so that part of the trip just never took place.

Mr. Shibley: So that all of the intended plans to visit a bank in Munich went down the drain with that?

Hon. Mr. Davis: That is correct, Mr. Shibley.

Mr. Shibley: And in lieu of proceeding to Munich what did you do?

Hon. Mr. Davis: We went to London, from London to Stuttgart, through the Black Forest to Zurich, to home.

Mr. Shibley: Then, as I understand it, you spent two or three days travelling through the Black Forest in Europe. Is that correct?

Hon. Mr. Davis: That is correct.

Mr. Shibley: And you were in the vicinity of Lake Constantine?

Hon. Mr. Davis: Lake Constance.

Mr. Shibley: ^{I am sorry.} ~~That's right,~~ Lake Constance.

Hon. Mr. Davis: I think it's Lake Constance.

Mr. Shibley: All right. And in the course of that trip, it is my understanding that, once again, you raised the question of a visit to a foreign bank to obtain general information referable to European sources of funds. Is that correct?

Hon. Mr. Davis: That is correct, Mr. Shibley. I should explain to the Chairman, and members of the committee, and I can't be precise here, but during the day and a half in London it started then to become apparent to me that there were going perhaps, to be some, ~~perhaps some~~ significant economic determinations made by our neighbours to the south. I can't tell you whether it was in London, or whether it was after we had arrived in Germany, I asked Mr. Moog, because I was concerned, I was

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interested, if he knew anyone in Zurich, because we were going to fly home through Zurich, who could arrange to have an appointment with, or a discussion with, some person or persons who might be knowledgeable in the economic field internationally.

I want to make it very clear, Mr. Chairman, that it was at my suggestion that this appointment was arranged. It was not for the purpose of inquiring about borrowings for the Province of Ontario. I just was not remotely interested in that at that point at all. I was concerned basically ~~was~~ about what I sensed were developments about to take ~~place~~ place in the United States. Mr. Moog, through a friend, was able to arrange an appointment with a financial institution in Zurich, a Swiss financial institution in Zurich, where a discussion did take place and where, if members of the committee can recall, I don't say the discussions were helpful from the standpoint of I knew what to do about them, but there was some degree of accuracy in the predictions and what the gentlemen we were talking to suggested ~~what~~ would be happening because I think it was on the Sunday we returned that Mr. Nixon made his rather difficult pronouncements. I think I'm right in this statement, Mr. Shibley.

Mr. Shibley: You're talking about Mr. Richard Nixon, the President of the United States?

Hon. Mr. Davis: Yes, that's right. I'm not referring to Mr. ~~Gulbrooke's~~ ⁴⁵ leader. I think ~~he~~ ^{it} was at that time, or very close to it, when the pronouncements were made about the economy of the United States, about what they were going to do, and so forth. I think it is fair to state that the people ~~xxxx~~ that I was chatting to had some very real insight into it. The point I'm making is this was the basis for that discussion.

Mr. Shibley: Mr. Premier, just to provide the committee with a ~~little more~~ information, the bank in question, and without, at the moment, mentioning its name, the bank in question, I understand to have been a very large Swiss bank.

Hon. Mr. Davis: Mr. Shibley, we've had this discussion,

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you and myself. I'm quite prepared to accept that it is a large Swiss bank. I honestly don't know, related to other Swiss banks.

Mr. Shibley: And the people ~~was~~ with whom you were conferring at that time were principal officers ~~a~~ of that bank?

Hon. Mr. Davis: That is correct and one of the officers, Mr. Shibley, without becoming too definitive, was experienced in other thanⁱⁿ the straight banking field.

Mr. Shibley: I think I have to ask you this, Mr. Premier, he was a person with political background?

Hon. Mr. Davis: That is correct.

Mr. Shibley: And because he had a political background you and he had more in common, let's say, than the other gentleman who was present from the bank?

(Tape H=1287 follows)

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PLG~~(Mr. Shibley)~~~~background~~~~Hon. Mr. Davis: That is correct~~~~Mr. Shibley: And because he had a political background
you and he had more of a political background, than the other
gentlemen who were associated with the bank.~~

Hon. Mr. Davis: That is correct because it was the, shall we say, the international, the political aspect that I was primarily interested in.

Mr. Shibley: Yes, where as the other gentleman had no such background and ...

Hon. Mr. Davis: Not to my knowledge.

Mr. Shibley: All right. Now just before you arrive -- and this meeting was in Zurich is that correct?

Hon. Mr. Davis: That is correct.

Mr. Shibley: Now I gather from your statement of evidence to this point, that the trip, therefore, to the bank was a spontaneous trip?

Hon. Mr. Davis: It was a spontaneous trip at my suggestion.

Mr. Shibley: Yes. In fact the arrangements made were very hurried and your efforts to get there were hurried I understand

Hon. Mr. Davis: They were extremely hurried. Nearly didn't make it.

Mr. Shibley: Yes. All right. Now then, there is this spontaneous arrangement made through a friend of Mr. Moog to visit this bank in Zurich. What time of day did you arrive?

Hon. Mr. Davis: It was very close to the closing of bank hours which would be I would say, sort of mid or late afternoon. I am not sure just what time the banks close in Zurich on a Friday afternoon, but it was anyway very close to that time.

Mr. Shibley: Now then can you give the committee a description of the room ~~in~~ within which you and Mr. Moog met with these two Swiss bankers.

Hon. Mr. Davis: Yes Mr. Shibley. It was a relatively large board room, something comparable to those of you who have been

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in the Cabinet room. I think a room fairly close to that size.

Mr. Shibley: A lot of us have never been in the Cabinet rooms.

Hon. Mr. Davis: You are welcome to come and visit any time.

Mr. Shibley: For the record I am anxious to establish that it was a large room was it?

Hon. Mr. Davis: Yes. It was not as large as this room, narrower, but a board room, yes it was relatively large.

Mr. Shibley: Now then, can you tell us how long the overall meeting in that room lasted?

Hon. Mr. Davis: My best guess Mr. ~~Shibley~~ Shibley would be about half an ~~hour~~ hour.

Mr. Shibley: At the outset did the four of you converse together?

Hon. Mr. Davis: Yes at the outset the four of us conversed and as I say it was basically a general discussion related not to the question of borrowing or what have you, but more in the direction that I indicated earlier; towards the end of the discussion the ~~one~~ gentleman and I were continuing our observations. I am not sure of this but I think all four of us had sort of left the table. We were at one end. Mr. Moog and this other gentleman were in another part of the room as I was getting ready to say my good-byes and thank yous. There was a discussion. I can't tell you from personal knowledge the discussion that took place ~~how~~ between Mr. Moog and this other gentleman. I think it is fair to state and I am ~~g~~ being pressed very hard here to recall all of this, that there was a discussion I would think in German because I have to be fair -- I think I heard them discussing, but it was not in a language that I understood so I can only assume it was German.

Mr. Shibley: If you go ~~back~~ back for a moment, you mentioned that this was when relative to the time of your leaving?

Hon. Mr. Davis: This was getting close to ~~the~~ Mr. Shibley, the conclusion of the half-hour visit, yes. It was not at the

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outset.

Mr. Shibley: All right. Where were you located in juxtaposition to the position of Mr. Moog and the banker with whom he was conversing in another language?

Hon. Mr. Davis: You mean how far away they would be at that point?

Mr. Shibley: Yes.

Hon. Mr. Davis: Well not far enough away for me not to have known they were talking to one another, or if -- I don't know if I can give you in feet or not. It would be really a very--- I don't ~~know~~ know ~~whether~~ whether it would be from you to me or not.

Mr. Shibley: Did you notice whether any documents changed hands ~~any~~ between that Swiss banker and Mr. Moog in the course of their discussion?

~~Maxx~~ HON. Mr. Davis: I don't recall Mr. Shibley whether there were or not. I don't know but I could not say that there were ~~a~~ not.

Mr. Shibley: All right. Did you notice whether Mr. Moog was making notes of whatever it was they were talking about?

~~Hon. Mr. Davis: Here again I would have to say it was possible but to say that I actually saw him making~~

Tape H 1288 follows

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↑

Hon. Mr. Davis: Here again I would have to say it was possible, but to say that I actually saw him making notes ~~for~~ I just couldn't do that for you. I don't know.

Mr. Shibley: Now, then, there was some measure of separation, however, in terms of your location within that room?

Hon. Mr. Davis: That is correct.

Mr. Shibley: And to the extent that you overheard anything, it was in a language unfamiliar to you?

Hon. Mr. Davis: Not completely unfamiliar, having been in the country for then three or four days, but I think it was in German; yes.

Mr. Shibley: But not understood by you?

Hon. Mr. Davis: Not understood by me. If my wife had been there, very frankly, she might have understood it.

Mr. Shibley: Well, just while we're at that. Your wives were not in that room?

Hon. Mr. Davis: No, they were not. In fact, one wife was a little upset that I was there and I think the other one was, too! We had promised that it would be complete holiday, Mr. Shibley.

Mr. Shibley: Yes. We all do that to our wives.

Hon. Mr. Davis: I think, hopefully, not alone.

Mr. Shibley: Now, then, quite apart from understanding the language, Mr. Premier, were you aware as to the subject matter of that conversation in any ~~way~~ whatsoever?

Hon. Mr. Davis: No, I wasn't, Mr. Shibley. I did not know what they were discussing.

Mr. Shibley: And this would be during the latter part of your vacation, I take it? So that it would be closer to August 15 than to August 9?

Hon. Mr. ~~of~~ Davis: ~~xxxx~~ It would be the Friday afternoon, as I say, close to whatever the bank hours are where people stop business in Zurich on a Friday afternoon in mid-August.

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Mr. Shibley: That would be Friday the 13th?

Hon. Mr. Davis: That's Friday the 13th. I'm very optimistic about the 13th. It's always been one of my better days, although you may argue this over the next few days.

Mr. Shibley: All right, Mr. Premier. Now, then, did you ever become aware of the subject matter of the conversation that took place between Mr. Moog and that Swiss banker on that occasion?

Hon. Mr. Davis: Mr. Shibley, to the best of my recollection I did not, until such time as you and I were discussing this matter last Tuesday.

Mr. Shibley: Yes. So, your first information referable to the discussion that was held between Mr. Moog and that Swiss banker came from me on the evening of July 16?

Hon. Mr. Davis: Actually late afternoon.

Mr. Shibley: Late afternoon, yes.

Hon. Mr. Davis: Getting close to evening.

Mr. Shibley: Yes.

Mr. Chairman: Did you say Tuesday?


Mr. Shibley: I'm sorry, it was the 17th. Yes, Tuesday, July 17. Were you aware, at any time, until my conversations with you, that subsequently - I'm talking about subsequent to August 13, 1971 - Mr. Moog had correspondence with that same Swiss bank referable to the funding of the Hydro head office building?

Hon. Mr. Davis: No, Mr. Shibley, and I should make this point, because I think it is also relevant, that it was some short period of time, some time between the 15th and the end of August that Mr. Moog made me aware. And I remember the phrasing, as I told you in our discussion, with some degree of accuracy, because I had expected that, knowing the industry, it would have been the other way - and I hope the committee will understand what I'm going to say. Mr. Moog came to me and said that he had been approached by Ontario Hydro with respect to their new head office building. And I made it clear to him, at that point,

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I think in a relatively polite and not subtle way, but a polite way, that, "Fine; now let's talk about something else." And it is fair to state, Mr. Shibley and to members of this committee, that I did not, from that time, until ~~and~~ and here I ~~can't~~ can't be as helpful to you on exact dates ~~but~~ but until after the contract was signed, did I not talk to Mr. Moog. In fairness to him, he made no attempt to talk to me about it. ~~And I think it must be understood by the committee that we had ample~~



Tape H 1289 follows

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(Hon. Mr. Davis)

~~to him, as he was not in a position to tell him about it.~~ I think it must be understood by the committee that he had ample opportunity to do so. ^{I mean} There is no point in saying that he couldn't have, he could have.

Mr. Shibley: Yes. I will get back to that conversation, Mr. Premier. I want to just finish with this matter of ---

Hon. Mr. Davis: Yes, I did not know ---

Mr. Shibley: --- your knowledge of the ---

Hon. Mr. Davis: Yes, that he was in some communication with the financial institution in Switzerland.

Mr. Shibley: Right. So that, just to be clear now, until my meeting with you on July 17th, there had been no written or other communication between you, or anyone on your behalf, with anyone within Hydro or anyone within Canada Square, including Mr. Moog, as to what had been discussed between he and the Swiss bankers and as to the correspondence that subsequently passed between them. Is that correct?

Hon. Mr. Davis: That is completely correct.

Mr. Shibley: Then, with respect to information communicated to me, Mr. Premier, by Mr. Fleck as to the circumstances of that trip, you would not have known of Mr. Moog's activity at the time of the Swiss visit or his ~~or~~ correspondence and therefore you would not have told him about ^{it} ~~this~~, is that correct?

Hon. Mr. ~~Shibley~~ Davis: That is correct and I think it is also fair to state, Mr. Shibley, that in your discussions with Mr. Fleck I think he pointed out that he had not had an opportunity to discuss with me my relationship with Mr. Moog, so that he could say to you what in fact took place and as a result

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he was not in a position to cover that even if it had been
necessary to cover it, because I hadn't talked to him about it ^{at that point}

Mr. Shibley: I just want to clear that up, sir, if
I may. When ~~and~~ ^{and} I made enquiry of Mr. Fleck referable to
that trip ^{at} at the time of that enquiry his own information was
limited as you indicated and he indicated to me that he would
want to pursue it further before being precise, is that correct?

Hon. Mr. Davis: That is my ~~understanding~~ understanding
of what you and Mr. Fleck discussed.

Mr. Shibley: Yes, and to the extent that in his
first comments to me there would have been no reference to the
circumstance of Mr. Moog's visit with you to the Swiss banker, he
was not aware of that?

Hon. Mr. Davis: No, that would be correct.

Mr. Shibley: So that in terms of his failure to
tell me that, it was because he had ~~not~~ not yet conferred with you
to receive that information from you?

Hon. Mr. Davis: That would be correct.

Mr. Shibley: All right. And even if he had
conferred with you, because you yourself did not know of the
relevancy of the attendance, you wouldn't have been alert to
certainly tell him of that attendance?

Hon. Mr. Davis: No, I would not have been alert to
but neither would I have been reluctant to.

Mr. Shibley: Right. Because you didn't know
what Mr. Moog had been saying to the Swiss bankers while you
were present?

Hon. Mr. Davis: That is correct, but I would not
have been reluctant to say to ^{Mr.} Fleck to tell you that I had been
at a financial institution in Zurich on the 13th of August, 1971.

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I understand that.

Mr. Shibley: I just want this committee to understand, sir, the circumstances, and I will be ^{indicating} ~~commenting~~ later ~~in~~ with more precision, gentlemen of the committee, that I myself was not informed of the circumstance of the visit to the Swiss bank until July the 16th, the day before I attended upon the Premier. I ~~just~~ wanted to make it clear that although I had had discussion with Mr. Fleck, it was only in an incidental way and he did in fact say he had to check back with the ^{Premier} ~~Premier~~ that his then information to me did not include any reference to the attendance on the Swiss bank. What I mean by that is, he ~~was~~ did not relate to me ~~in~~ in my earlier discussion that there had been an attendance at the Swiss bank, but of course he also made it clear to me that his information was anything but precise because he had yet to take it up with the Premier. That is the situation.

Hon. Mr. Davis: That is my understanding of it, Mr. Shibley.

Mr Shibley: I then might go on with you, sir? Did you at any time subsequent to August of '71 discuss your attendance at that Swiss bank with Mr. Cronyn?

Hon. Mr. Davis: No, I never mentioned it to Mr. Cronyn at all.

Mr. Shibley: Nor to Mr. Fleck?

Hon. Mr. Davis: Nor to Mr. Fleck.

Mr. Shibley: Or anyone within your office or anyone advising you?

Hon. Mr. Davis: No one at all.

Mr. Shibley: Now then ---

Mr. Bullbrook: I am wondering ^{if at this stage} ~~if~~ you would consider putting to the Premier, since it seems to be relevant at this time, whether he was familiar

(Tape H-1290 follows)

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(Mr. Bullbrook)

~~if you would mind asking the Premier whether he was familiar with the questions put forward by myself and others of his Cabinet colleague, the Treasurer of Ontario on June 12, 1973 and June 13, 1973 in connection with the direct or indirect involvement of Mr. Moog and I quote from Hansard, Page 2995:~~

"By way of one final supplementary, would the Treasurer ascertain whether Mr. Moog had any involvement, direct or otherwise, with any minister of the Crown or any official of the government of Ontario in connection with ~~the~~ acquiring any borrowing by this government in Germany?"

Hon. Mr. White in response: "I will certainly inquire about it."

And I'm just wondering if you would mind asking the Premier at this stage whether he was familiar with these questions and the questions subsequently which I will, if necessary, question the Premier on subsequently.

The questions the next day placed to the Treasurer again, the point of order raised by the former Treasurer in response and whether the Premier was aware of these questions, whether the Treasurer asked him about any involvement with Mr. Moog directly or indirectly and whether he made any response to the Treasurer with respect thereto.

Mr. Shibley: Mr. Bullbrook, ~~with respect to~~ in fairness to the Premier, your questions are noted. This examination is not going to be brief. There will be opportunity during a recess to consider the questions put and I'd be glad to pursue them at that time.

Mr. Bullbrook: I have a twofold ~~purpose~~ ^{readily} purpose in the interjection so the Premier will ~~understand~~. This seemed to be an appropriate time in view of the Premier's response that he had no discussion ~~a~~ subsequently in connection with this ~~the~~ matter with any other person. I wanted the Premier to be alert to the fact that I intended through you or directly

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to question as to the absence of response to the questions put by ~~me~~ myself and other colleagues in the Legislature on June 12 and 13 of this year.

Mr. Chairman: Thank you, Mr. Bullbrook.

Mr. Shibley: Now, I just go back for a moment, Mr. Premier; Did you at any time prior to my visit to you on July 17 of this year discuss with Mr. Moog ~~the~~ the matter of your trip to the Swiss bank on August 13, 1971?

Hon. Mr. Davis: No, Mr. Shibley, he didn't discuss it. As I mentioned to you, the - I think I'm right in this - the only time that I made some inquiry with respect to the financing of the building and I think I'm right in this, was a result of Mr. Renwick's question or supplementary question in the House as to the source of financing which I think was in April of this year?

Mr. Renwick: Yes, I believe so.

Hon. Mr. Davis: Yes.

Mr. ~~Renwick~~ Shibley: So that again I take it that Mr. Moog himself never alerted you to the circumstance of what he had~~d~~ been saying to the Swiss banker and what he had been communicating by correspondence with him at any time and the only way you found out about it was through me?

Hon. Mr. Davis: That is ~~correct~~ correct.

Mr. Shibley: And similarly, sir, when ~~we~~ were you first aware that he had made the observations to Mr. Candy on June 11, 1971 as outlined in Exhibit 13, to the effect that he would be travelling to Europe as an advisor to you respecting to arrange further financing for the Province?

Hon. Mr. Davis: Well, Mr. Shibley, I can only comment on when I first saw the memorandum. I can't comment on what Mr. Moog may or may not have said and when I became AWARE of that because that I don't know. The first time I knew of Mr. Candy's or at least, the first I knew of discussion between Mr. Candy and Mr. Moog related to this, and I can't comment what

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was in that discussion was when - well, sometime after this,
whenever it was produced here.

~~Mr. Shibley: That is my point, Mr. Premier. I
take it that Mr. Macg saw~~

H-1291 to follow

~~That Mr. Moog:~~

~~which was not a fact until it was presented to me.~~

Mr. Shibley: That is my point Mr. Premier. I take it that Mr. Moog saw fit to mention to Mr. Candy on June 8, ~~1971~~ June 11, 1971 that he was your friend; and to mention to him what amounts to an overstatement that he was going to Germany next month as your adviser ^{to} to arrange for further financing. What Mr. Moog was saying to Mr. Candy and representing to Hydro through him, was never made known to you?

Hon. Mr. Davis: Never made known to me, Mr. Shibley, at all. I did not know that Mr. Moog and Mr. Candy were having discussions at that time ~~and~~ ^{and} the first indication I had that Mr. Moog, if he did, make these representations, ~~in~~ in this way, was ~~when~~ whenever whatever Exhibit No. it is was filed.

Mr. Shibley: Exactly.

Hon. Mr. Davis: ~~or~~ or when it was in the press. I am not sure which.

Mr. Shibley: And neither did anyone in Hydro tell you about those representations, did they?

Hon. Mr. Davis: No. There was no discussion between myself and anyone in Hydro, Mr. Shibley and Members of the committee at any time related to (a) what people were involved in the discussions for the head office building, nor the source of finance and that applies to all of them.

Mr. Shibley: Mr. Premier, Mr. Gathercole and other Hydro witnesses who have already testified continuously have taken the position that they never mentioned to you the name of any of the developers.

Hon. Mr. Davis: I think that is a very fair position, Mr. Shibley. I do not recall anyone at Hydro ^{and} in my discussions with people at Hydro were confined to the Chairman; was there any indication to me as to who the people were who were making proposals to them. I think that is accurate.

Mr. Shibley: All right. Do you have any comment to make to this committee regarding the timing of the disclosure to me, which was July 16 of ~~this~~ this year, by Mr. Moog and the failure on

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PLG

(Mr. Shibley)

the part of anyone within Hydro if they knew it, which I am not sure yet that they did, of the fact that you and Mr. Moog visited a Swiss bank while in Europe in 1971?

Hon. Mr. Davis: No, Mr. Shibley, I ~~was~~ have no comment or judgment to make on that. But I say with respect, I think that is something that obviously you and members of the committee will be ~~discussing~~ ~~discussion~~ with Mr. Moog and his counsel. I think for me to -- well, I have no observation--I can't.

Mr. Shibley: Mr. Chairman, at this juncture I think that the committee should be appraised of the following, and at the conclusion of this recital, I am going to ask you to direct the production of a file that has been refused to me by Mr. Moog's counsel to this point in time, although I was afforded an opportunity in circumstances that I will be examining into ~~and~~ when Mr. Moog is a witness in that witness box. I want the committee to know the following.

That we requested of the Canada Square people a narratives of anyone who were knowledgable as to the issues before this inquiry, and these narratives were provided ~~time~~ on May 18. We also requested the files of Canada Square which were relevant to the inquiry, and these were received by me on May 24. They were reviewed by myself and Mr. Bell on May 26 and reproduced in my office with the exception of duplicated material, ~~and~~ Then the original ~~same~~ documents were returned to the solicitors for Mr. Moog. The committee should know that at no time prior to my interview of Mr. Moog on July 16, 1973, was I informed of the attendance upon the Swiss bank in August, on August 13, 1971, nor of the existence of a file in the ~~same~~ possession of Canada Square containing documents related to that same attendance and which file included ~~subsequent~~ subsequent correspondence

Tape H 1292 follows

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fvk

(Mr. Shibley)

~~containing documents related to that same attendance~~
~~and, a letter file related to frequent correspondence between~~
Mr. Moog and representatives of that bank. I conducted an interview of Mr. Moog in the ordinary course of preparing for his examination which was intended to take place on July 18. I reached the point of requesting a meeting with him, and his counsel as I say, on July 16, when this information surfaced in a manner in which I do not want to comment upon at this time. I think it more ~~appropriate~~ appropriate to deal with the circumstances when Mr. Moog is in the witness box.

The file in question, however, was referred to ultimately by Mr. Finlayson as being in his possession. He has taken the position, and he is here today, and I would ask him to correct me in any respect in which he thinks I am incorrectly stating the sequence of events. He said that he was not sure that the content of the file was relevant and, because disclosure would be highly prejudicial to Mr. Moog's ability to fund projects with European sources of financing, he was not going to produce the file.

I then made it clear to him that I would insist, before this committee, that the file be produced and that, although I might be ~~at~~ delayed, that I would ~~not~~ not be prevented from getting that ~~a~~ file in the ultimate result.

Mr. Finlayson then said that ~~while~~ he was willing to show me the file without letting me retain possession of it because he wanted me to understand that it was not relevant and that it was so highly prejudicial and asked me to extend him my protection against disclosure of its content if I reached the same conclusion. I refused to give him any such assurance whatsoever and ~~he~~ told him that there was no privilege, and no protection, and it was left to me to decide, and me alone, after I had reviewed the content of the file as to whether it was relevant and, beyond that, as to whether it should be produced to this committee as an exhibit.

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(Mr. Shibley)

He then ~~stated~~ said that ~~was~~ he was, in any event, in spite of my statement, going to let me see it and I'm sure it was his hope that I, having read it, would agree with his position that it was irrelevant or prejudicial, or both. Then I again cautioned him that if he let me view the file he was to understand that even the information that I elicited from a reading of its content was, in no way to be understood by him, to be protected. Even if he did not give me the file I intended to employ the information elicited therefrom.

He nevertheless produced the file to me and I proceeded to read its documents very quickly. The very first document elicited from me the observation that it was relevant and had to be produced and a scanning of the additional documents, respecting which I made a few written ~~notes~~ notes; Mr. Bell and I, subsequently made notes of our recollections of what was within the documents. When it became apparent to Mr. Finlayson that I was going to insist upon the production of the documents as being relevant to the inquiry, he asked for the return of the file, which I gave him, and then took the posture again that the prejudicial~~ity~~ effect upon Mr. Moog, in terms of his future dealings with this Swiss bank, and perhaps others, was so great that he was not going to produce it to the committee, and that, using his words, would fight me on it.

~~... THAT I~~
I was ~~accustomed~~ accustomed to that posture being taken and we would deal with it in due course. I then put it to him that if, what was of concern, was the identity of the bank that I was quite prepared to have the identity of the bank edited from the documents and, even further, to have the identity of the individual.....

(Tape H-1293 follows)

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 M.S.

(Mr. Shibley)

~~that I was really distressed because of the order of the file.~~
~~And edited for his convenience.~~ And even further, to have the identity of the individuals with whom the conversations had taken place and to whom some of this correspondence was directed, edited. As long as the bank was identified as a large Swiss bank, I didn't think it material at that point of time that the file, the content, be produced without such editing; and I'm still of that view. This was to be ~~was~~ considered by Mr. Finlayson overnight and the next day he advised me that he was still going to persist in his position that the file would not be produced.

I can tell the committee that there is correspondence within that file referable to the funding of the Hydro head office building, which can be directly connected to other evidence as to the initial submissions made by Canada Square. And it is my opinion, my very strong opinion, that the documents are relevant to this enquiry. I have asked that ~~the~~ a Speaker's ~~warrant~~ warrant issue this ~~morning~~ morning. I had hoped that the file would be volunteered to me at any time up until today, and it has not been. I ~~don't~~ don't know that Mr. Moog is present today. I had intended that he be served with a Speaker's warrant and be required as a matter of consequence thereof, to produce the file.

Mr. Bullbrook: Excuse me. Is the file a file of Mr. Moog's personally or of Canada Square Corporation?

Mr. Chairman: We'll give you an opportunity to make representation in a minute, Mr. Finlayson.

~~Mr. Finlayson: I can't wait.~~

Mr. Shibley: Our memory of the designation of the file is "Moog re Swiss financing." But I can tell you that the content of it, which incidentally was discussed with Mr. Moog at the time of my interview - I believe I'm right - wholly relates to the attendance upon the Swiss bank ~~and~~ ^{and} the subsequent correspondence. *Mr. Finlayson, perhaps you*

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Mr. Chairman: Mr. Premier, I don't know whether you want to sit there during this discussion. I suppose it's as comfortable a seat as you'll have anywhere in the House.

Mr. Shibley: I apologize, Mr. Premier, for having to go through this while you are present, but I've reached a point where I must have that file.

Mr. Chairman: Are you content to stay there? I don't know just how long this will take. It may take 10 or 15 minutes, I would assume.

Mr. Renwick: Mr. Chairman, may I make a suggestion? That in order not to detain the Premier, that since this matter will obviously take up some time, we will then assume be having a recess, that ~~may~~ it may be convenient for the Premier to withdraw unless he wishes to stay here ~~xxx~~ for the discussion?

Mr. Chairman: We will probably, I would think, take 10 to 15 minutes on this and then follow by a 10 or 15 minute recess. Now, Mr. Premier, you suit yourself in that time.

Mr. W. Newman: Mr. Chairman, why are we pursuing this point when the Premier is here? This is what I am a little bit lost on.

Mr. Chairman: Well, I imagine that, ~~xxx~~ and I don't know, but I imagine he wants some of the evidence from this file to produce to the Premier for his thoughts on it. Is that reasonable?

~~xxx~~ Mr. Shibley: That's right.

Mr. Chairman: Mr. Finlayson, do you have any representations to make, sir?

Mr. Finlayson: Yes, Mr. Chairman, I have quite a few, and I'd like to say at the outset that I'm very disappointed that Mr. Shibley has taken this opportunity to read this very self-serving statement of his into the record. It seems to me, with great respect, that these things can be handled in a lot better way than he is, but since he has chosen to pick the forum

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(Mr. Finlayson)

of this hearing and the press for making his statement, ^{He has} ~~and~~ I will take the same opportunity to reply to him.

I would like to point out in the first place that while what Mr. Shibley said is correct, that he has a great inability for remembering in what order they were all said. And I will try to put them in the proper context. Now, I say that in the first place because it has always been the approach of my partner, Mr. Laidlaw, who started this proceeding, and I have carried on the same way, that we felt that since it is so difficult in proceedings of this nature to determine what is relevant and what is irrelevant, when really you have a frame of reference ^{from} ~~in~~ the Legislature which is difficult to define, that we ~~maxxx~~ don't have the ordinary protections that we have in a court of law where an objection can be made and a ruling made as to relevancy. And, therefore, it was necessary for us ~~xxxxxx~~

Tape H 1294 follows

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PLG

(Mr. Finlayson)

~~protection that we have in the court of law where an objection can be made and a ruling made on the admissibility, and therefore, it was unnecessary for us to take Mr. Shibley into our confidence~~

on occasion to tell him things which were of potential embarrassment to our client, not because it is relevant in any way to these proceedings, but because he is a business man, and particularly because of his contacts with the financial community. Consequently, when Mr. Shibley came to the offices of Canada Square on Monday, July 16, to conduct his interview, he asked Mr. Moog about his trip to Europe with Premier Davis and Mr. Moog in my presence, quite fairly and frankly & recorded everything that had taken place, and at the end of this when Mr. Shibley said, "is that all that happened?", I said that "I think you should know in fairness that there was some correspondence which arose out of the trip to the Swiss bank" and I stressed to Mr. Shibley how important it was that there be no publicity on this fact. I told Mr. Shibley the name of the bank, the identity of the officers and everything that was discussed. I said I was quite agreeable if he really thought it was necessary, to bring this fact out before the committee if the name of the bank and the identity of the parties are concealed, and I would stress that I took the initiative in taking that point. At this time Mr. Shibley agreed with me, without my really asking for any undertaking from him, that this appeared fair and that while he could give no undertaking on behalf of the committee, he expressly agreed to state that he knew the identity of both the bank and the people and he was prepared to tell the committee that their identity was irrelevant. Now at this stage I had asked for no undertakings and had received none. I had told him that I was giving him this information because I felt that once he did see it that he would probably agree with me that it had nothing to do with the case, so I then showed him the file as evidence of our good faith. It was correspondence between Moog and the bank, and two questions were asked by Mr. Moog and both were answered. The first question he asked them was if their loan could be amortized over 15 years

(Mr. Finlayson)

and the answer was that it could not. It was not the practice that was understood by the Swiss people. The second question he asked is if the bank could renew a loan after 15 years if such were made, and the bank said that it could give no such undertaking, so that what it really amounts to is that Mr. Moog had made some overtures to this particular financial source and he had been politely but firmly turned down.

Now I pointed out to Mr. Shibley that the only significance of the file is in the first place we wanted to be perfectly open with him and answer all his questions, but that it only corroborated Moog's evidence, and I pointed out that its publication would be ruinous to Mr. Moog, since Swiss banks are notoriously sensitive about correspondence that they have with respect to applications for loans, and if the bank's name is identified or if the persons with whom he spoke are identified, then there is very little likelihood at all that Mr. Moog will have this source of funds available in the future, and indeed that he is unlikely to receive any comfort from any Swiss source.


Now it was then that Mr. Shibley suggested that perhaps if we ~~blotted out~~ blotted out the names of the bank and the names of the individuals involved, that it would be possible to produce the doctored documents in that way. I said, I have to think about that and I did overnight and I advised him the next day that having looked at the documents again it was quite apparent to me and to any other people that I had spoken to, that there was no way of effectively concealing the identity of the bank, that any person's knowledgeable in this business would know just who it was that Moog was talking to, and I said, but I ~~as~~ said, 'now if there is any reason that you want to look at this file at any time, I am perfectly happy to have you do so, because I don't want any suggestion being made that we are trying to conceal something from this committee, or that we are not being completely frank and fair.' Now as I say, I regard this speech this morning by

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pLG

(Mr. Finlayson)

Mr. Shibley as being very much out of order. I don't know -- he
has given no reason ~~except~~ except his own opinion and some apparent
pique at the fact that I don't agree with his opinion as being



Tape H 1295 follows

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M.R.

(Mr. Finlayson)

~~out of order. I don't know. He's given no reason~~
~~except his own opinion and has some spurious logic at the~~
~~fact that I don't agree with his opinion as being the reason~~
for demanding that this material be produced. It's got
nothing to do with the inquiry and I think I should remind
you, Mr. Chairman, that Mr. Shibley is not running this
committee and that he shouldn't be making speeches of this
nature. Now, I've come here ~~and~~

Mr. Bullbrook: I don't regard ~~and~~

Mr. Chairman: I don't feel that that is necessary,
Mr. Finlayson.

Mr. Bullbrook: Mr. Finlayson, we won't accept that.
Our counsel doesn't make speeches to us. He gives us
information.

Mr. Finlayson: Well, I'm making a speech to you,
sir, and I wish I could have the courtesy of a hearing.

Mr. W. Newman: Maybe we could wait until he
is finished.

Mr. Chairman: Well, all right. I just thought
that that remark by Mr. Finlayson was uncalled for.

Mr. Bullbrook: Well, I'm sorry, Mr. ~~Finlayson~~ ^{Newman},
thought you would be of one mind with me on this, that counsel
doesn't make speeches to us.

Mr. Chairman: Carry on, Mr. Finlayson.

Mr. Finlayson: I think that pretty well concludes
what I ~~intended~~ ^{would like} to say. I am extremely disappointed at the
attitude that Mr. Shibley has taken in this matter. He knows
perfectly well that there ~~is~~ what's in the correspondence. He
has seen it. I have offered to let him see it again. If it is
necessary, if it becomes that much of an issue, I'd be prepared
to let other select people see it but I want to know who is
going to see it because if it ever gets leaked to the press
I want to know who is responsible for it. Those are my
submissions.

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Mr. Bullbrook: Well, may I ask a few questions of Mr. Finlayson?

Mr. Chairman: Yes, Mr. Bullbrook.

Mr. Bullbrook: Mr. Finlayson, do you make any distinction in arranging financing for a public enterprise as distinguished between arranging financing for a private enterprise?

Mr. Finlayson: That's got nothing to do with me. I'm not here as an expert witness.

Mr. Bullbrook: All~~at~~ right; if Mr. Finlayson doesn't want to. I want to say to you, sir, that I see a distinction here. I see a very significant distinction. When you are dealing with public bodies, you must recognize that every matter that the public deems relevant through their duly elected and appointed officials is open to the public.

That is an essential distinction that has to be recognized.

Mr. Shibley: Well, ~~the~~ members ~~are~~ ^{are} ~~there~~ ^{there} ~~long~~ ^{long}

Mr. Bullbrook: Canada Square wants to take it upon themselves to deal with other private enterprises in a confidential fashion, so be it. But one of the peripheral obligations of dealing with the public is that sometime you might have to tell the public all the ramifications of your dealings with them.

I want to say, Mr. Chairman, that I want to resist without reservation the comment that counsel was making a speech to us. I'm not going to comment as to the chronology and undertakings, implied or direct, between counsel in this connection.

Suffice it to say that I mean no disrespect to Mr. Finlayson but, collaterally, my respect for our own counsel is very high. ~~Current~~ I just cannot understand how Canada Square can take the position, and I quote from Mr. ~~Finlayson~~ ^{Finlayson},
Finlayson,

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M.R.

Mr. Bullbrook

"This file has nothing to do with the case before us", when the very file contains correspondence in connection with the financing of the building itself.

Mr. Finlayson: That is not the fact.

Mr. Chairman: Well, now, just a minute, Mr. Finlayson.

Mr. Finlayson: That is not the fact. This building isn't being financed with Swiss funds at all.

Mr. Chairman: That is one thing I was going to ask you, Mr. Finlayson.

Mr. Bullbrook: I haven't finished yet.

Mr. Chairman: All right.

Mr. Bullbrook: I'll just be a moment. Whether the financing was successful or not again begs the question. That isn't why we are here to deal with questions of success or otherwise. If that was the situation, then Don Smith would never have come before us because he was abjectly unsuccessful. Y and R wouldn't have spent their time.

Mr. Shibley: Mr. Bullbrook, I think you can cut it short, the relevancy is much more direct than what you are thinking.

Mr. Bullbrook: May I say this to you: That I cannot for the life of me understand how counsel for Canada Square can make the comment that it has nothing to do with the case when he himself ~~admits~~ admits that it is correspondence with respect to proposed financing.

Mr. Chairman: Mr. Deans.

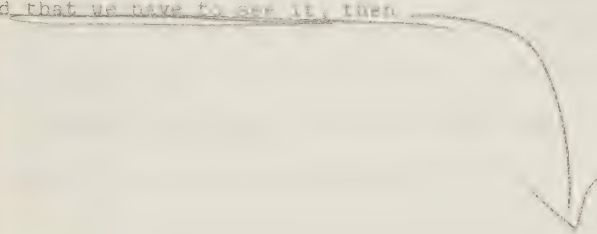
Mr. Deans: Mr. Chairman, it is not a matter of public or private in my view. It is simply that we don't know what is in the file. We have a counsel who has acted very well for us over a number of long weeks of hearings and produced for us evidence which, without his dedication, we wouldn't have had. I have complete confidence in his ability to determine whether something is relevant or not.

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(Mr. Deans)

We placed that confidence in him and he is reporting to us that there is relevant information in a file of Canada Square. We, therefore, have to support our counsel in his position that we have that evidence placed before us. It is just that simple. It is not a matter of any other consideration, in my view. I believe that when counsel says to us that having viewed it there is ~~significant information contained within it~~ and ~~that we have to see it, then~~



H-1296 to follow

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E.M.

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(Mr.Deans)

~~when the counsel have reviewed it, there is~~
significant information contained within ~~it~~ it, that we have
to see it, then I am prepared to support that position.

Mr. Chairman: Mr. Deans, I have great respect for
our counsel, he is not infallible and I feel that we should, however,
listen to ~~people~~ people before we order this in ---

Mr.Deans: I listened.

Chairman:

Mr. ~~Chairman~~: All right, but I wanted to get back
to Mr. Finlayson on the basis -- are you saying, Mr. Finlayson,
that this was not the company that eventually agreed to ~~finance~~
finance Canada Square building that we are investigating?

Mr. Finlayson: That is absolutely correct.

Mr. Shibley: Are you also saying it was not the
company that was to fund the transaction up until July of 1972?

Mr. Finlayson: I don't know the answer to that.

Mr. Shibley: Well then, ---

Mr. Finlayson: Just a minute, Mr. Shibley, please,
don't try to cut me off. I can't answer that question, it is
a question I have no objection to your asking Mr. Moog.

Mr. Shibley: Exactly, and that is why I said I
will elicit from Mr. Moog the circumstances of the production
of that file as well and we will leave it to that exchange of
evidence to determine what actually were the circumstances for
the production of the file to me. At the moment, Mr. Finlayson,
you have also indicated ---

Mr. Finlayson: You have already misstated cir-
cumstances of the production of the file.

Mr. Shibley: That is your statement, Mr. Finlayson,
we will get in to the evidence in due course.

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(Mr.Shibley)

You have also said to this committee that because it was not ~~ultimately~~ ultimately the source of funding, it was therefore irrelevant, but I am putting it to you now pointblank ~~that~~ was that the source of funding for this building as at the time of Mr. Moog's submission on January 24, 1972?

Mr. Finlayson: Ask Mr. Moog, he will answer the question.

Mr. Shibley: Well now, you see ---

Mr. Finlayson: I have no objection to being asked these questions.

Mr. Shibley: I want the file, Mr. Finlayson, because I think it is important ---

Mr. Finlayson: You've seen the file.

Mr. Shibley: --- to the Premier's position to enable him to be shown certain documents and to make his position clear vis-a-vis that correspondence as it was happening. That is why I want it now.

Mr. Renwick: Mr. Chairman, this is a difficult question. I certainly will disregard any of the personalized remarks that were ~~made~~ made by Mr. Finlayson in the course of his statement. It is a difficult situation when in the opinion of counsel for Canada Square that the disclosure to this committee and therefore of necessity to the world, will prejudice Mr. Moog's future business, financial dealing with financial institutions in Switzerland. From the point of view of the committee the question is the one which we have as a committee agreed to over a period of time that we will leave it in the hands of counsel for the committee to determine the relevancy of any particular evidence. In this instance, Mr. Shibley, as I understood it, is clearly of the opinion and saying to

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(Mr. Renwick)

the committee that the contents of that file are relevant to the ~~P~~roceedings of the committee.

I further take it that the reason why he raised the question at this time, and I believe he confirmed that to Mr. Newman, was that he wishes at this point in time to exhibit the file or a portion of its contents to the Premier for his comment and for the purpose of the Premier ~~re~~calling or giving his direct testimony to this committee about it.

Now, we therefore are in a position of extreme delicacy. It is the Premier of the province who is the witness before this committee. As I have said on other occasions, the committee sits dealing with matters related to the integrity of his government and on the other hand we have, as I stated at the very beginning, ~~the consideration of course for Canada Square that the disclosure of the contents of this file will be~~

(Tape H-1297 follows)

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(Mr. Renwick)

~~the~~ the considered opinion of counsel for Canada Square that the disclosure of the contents of this file will be severely prejudicial to Mr. Moog. That, Mr. Chairman, seems to me to be the two rocks in the harbour that we have to, in some way, deal with. I'm not prepared, right at this moment, to make the decision. I am inclined to the view, Mr. Chairman, ~~that~~ if my assessment of the reason for this committee existing and that is the question of the integrity of the government, and the integrity of the Ontario Hydro-Electric Power Commission, I'm inclined to the view that that question must take precedence, reluctantly, over the personal and business interests of Canada Square.

I'm not prepared to make my position clear on that at the moment, Mr. Chairman. I'd like to reflect a little bit and I would ask that we recess in order to have an opportunity to think a little bit about what to me is an extremely difficult and delicate problem of balancing of interests.

Mr. Chairman: All right, ~~we~~ we will, ~~that's~~ I think ~~maybe~~ there may be some other representations before we do recess but we will recess before I try to give any ruling. I would like ~~to~~ Mr. Finlayson to answer a question from me as to why ~~has~~ blotting out names and, perhaps, one or two ~~or~~ other pertinent items in those ~~to~~ letters, that the identities can still be ascertained? Is there no way of blotting out names that are important and still leave us the sense of the letters and keep the identity secret?

Mr. Finlayson: I don't know that. Certainly you could obliterate words to the point where ~~only~~ you could not identify the bank but you couldn't identify the transaction. I don't quite understand what my friend is saying. The Premier said he's never seen the file. The correspondence is not between *Rim* ~~be~~ and anybody else. It's between Moog and this particular bank. It's quite true that it does refer to the fact that he and the Premier had attended at this bank which Mr. Shibley

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(Mr. Finlayson)

well knows. If it's a question of showing this thing to the Premier so that he can read it all over and then, if Mr. Shibley wants to ask him some questions, I don't object to that. I just don't understand what all this hugger-mugger is about that Mr. Shibley should go so ~~slow~~ sinisterly.

Mr. Renwick: Mr. Chairman, if I may interject; I am interested in Mr. Finlayson's statements. I'm not interested in his editorializing comments about hugger-mugger. Now, if Mr. Finlayson will try to abide within the frames of reference of this committee and treat it as a serious problem affecting the public interests, then I'm prepared to listen further to him. Otherwise, I'm not prepared to listen further to him and I want him to clearly understand that.

Mr. Chairman: Mr. Newman.

Mr. W. Newman: Mr. Chairman, talking about the financial funding, I think the file is headed up: "Moog re Swiss Financing". I agree that if there is something in there very relevant to Hydro, but I think Mr. Shibley, that you did say that you would like to secure all documents in this file?

Mr. Shibley: I must tell you, Mr. Newman, there are no documents in that file other than as they relate to this transaction. It is not a general financing file. The only documents in that file, am I not correct Mr. Finlayson, relate to the Hydro head office financing? The only documents!

Mr. Finlayson: There's a prospectus in there that was given as a sample, but nothing other than that.

Mr. Shibley: You see, you're leading me into things. You've asked for explanations, but I asked the Premier ~~xxx~~ about, "did he see documents change hands?" The prospectus you mentioned is just such a document I want shown to the Premier, and ask him if this is one of the documents which changed hands at the time of that meeting.

Mr. Finlayson: Why didn't you say that? I'll show you

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(Mr. Finlayson)

the prospectus. You can show it to the Premier and ask him.
No, no, you've got to make a big production about this and try
to make it look very mysterious.

Mr. Bullbrook: Don't permit - Mr. Finlayson, please!

Mr. W. Newman: Mr. Chairman.

Mr. Chairman: I can't contemplate or can't presume
what Mr. Finlayson is going to say but I agree that some of his
remarks are unnecessary and uncalled for.

Mr. W. Newman: Mr. Chairman, may I say that if all
documents are ~~l~~ and our counsel feels that they are ~~l~~ relevant
and the counsel for Canada Square doesn't feel they're relevant
because they didn't get the ~~2~~ Swiss financing, and so forth,
may I suggest to the ~~2~~ Chairman that the ~~2~~ two counsels sit
down together and see if they can't work something out?

(Tape H-1297 follows)

(Mr. Wm Newman)

~~are relevant and the counsel for Canada Square doesn't feel they
are relevant because they didn't get bank financing etc etc.,
may suggest to the committee and the counsel sit down together
and one of them will work something out.~~

Mr. Shibley: But we can't, we have...

Mr. W. Newman: Without bringing it before this committee
on a basis that we could actually.....

Mr. Renwick: Mr. Chairman, I think we need an umpire.

Mr. Chairman: I am not so sure I want that responsibility.

Mr. Shibley: Mr. Newman I have tried and I am not
prepared to proceed in any other way now, unless Mr. Finlayson
is going to volunteer the document, I need a ruling from this
committee.

Mr. Chairman: You have no objections Mr. Shibley to
certain things being crossed out?

Mr. Shibley: I made it clear to Mr. Finlayson that he
could ~~take~~ take the documents and snow pak the names of the
bank and of the ~~individuals~~ individuals, but nothing else, and that
the documents in that form should be reproduced. At the moment
I don't see the relevancy of the name of the bank or the
individuals, but I also said to him, if the relevancy of those
names becomes apparent, then later I may yet require disclosure
of that information, but what I gather^{is} that Mr. Finlayson is not
prepared to produce the documents with that arrangement.

Mr. W. Newman: Then may I ask you Mr. Shibley, and Mr.
Chairman through you to Mr. Shibley, do you feel that if these
documents were released with the proper editing, that it could
hurt the financial structure of Canada Square completely,
irregardless of the Hydro building?

Mr. Shibley: I can't comment on that intelligently because
I don't know what Mr. Moog does in terms of foreign financing
etc. I have to accept from him that some prejudice may ensue. I
don't know. I can't answer that, but I do consider that the
documents are probative, relevant documents to be dealt with before

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(Mr. Shibley)

this committee. The Premier has already testified as to the circumstances of the trip, the conversation that took place without him understanding what it was, this correspondence is a ~~Swiss~~ follow-up on that attendance and I want to be clear through the Premier that although he saw certain documents change hands, this didn't ^{it} supplement...

Mr. W. Newman: I get your pardon?

Mr. W. Hodgson: He didn't say he saw documents change hands.

Mr. Chairman: When did he say that?

Mr. Shibley: I am sorry. He may have. I stand corrected.

Mr. W. Newman: He didn't say that either.

Mr. W. Hodgson: He did not.

Mr. Shibley: All right. Okay. Although a document or documents changed -- let's get it straight, you are right Mr. Newman, thank you. What I am trying to establish is that notwithstanding documents changed hands between Mr. -- a Swiss banker and Mr. Moog that this did not in any way supplement the Premier's understanding of what was taking place. I also want to get into the circumstance of notes taken at the time of -- notes taken referable to whether or not they were made at the time -- notes referable to the information elicited by Mr. Moog at that time. I want to get involved in certain of the content of the correspondence..

Mr. Finlayson, you keep pushing me in terms of relevance..

Mr. Finlayson: I didn't even say anything. ^{IT IS} My French friend here ~~is the Commissioner~~.

Mr. Genest. I am just talking to myself.

Mr. Finlayson: ^{He is} ~~getting~~ getting as ^{mad} ~~mad~~ as I am but I can't control it.

Mr. Chairman: We are glad you are here Mr. Genest. You relieve some tense moments from time to time. Mr. Henderson has asked to speak. Are you through Mr. Shibley? All right, Mr. Henderson.

Mr. Henderson: Mr. Chairman, this we have listened to evidence from the Premier, our ~~own~~ counsel has instructed us that

(Mr. Henderson)

at this moment he would like certain other evidence to question the Premier on, and it would appear to me that the counsel has presented ~~some~~ ^{fair} evidence all the way in this committee. It seems to me that we should support the counsel and this I am willing to do.

Mr. Chairman: Thank you Mr. Henderson. Mr. Allan.

Mr. Allan: Well Mr. Chairman, my remarks ~~are~~ are very ~~are~~ much similar to those of Mr. Henderson. We have been sitting on this committee for a long while. We have had a good deal of association with our counsel. I for one have complete confidence in the way he has carried on his responsibilities in connection with the hearings of this committee and certainly I would feel that I must support him.

Mr. Chairman: Well we are careful we are not prejudicing his favour Mr. Allan. However...

Mr. Allan: I could change.

Mr. Chairman: Mr. Walker.

Mr. Walker: Mr. Chairman, I think the interest that has been raised by Mr. Finlayson appears to be valid and that we must take steps to prevent the prejudicial effect. It seems to me that the way that that can be accomplished is through some form of blotting out of the name, whatever address it may ~~have~~ have, and the individuals referred to. ~~It seems to me that~~

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(Mr. Walker)

~~it seems to me that the way that can be accomplished is through some form of blotting out of the name, whatever address it may have, and the fact that it is~~ It seems to me that if the appropriate ~~document~~ documents are introduced in that fashion we will accomplish both ends, both the interest of the committee and avoiding the prejudicial effect to Mr. Finlayson's client.

Mr. Chairman: That seems to make sense. However, I've suggested I wouldn't make a ruling until after a recess. Mr. Gaunt?

Mr. Gaunt: Mr. Chairman, I just ~~may~~ want to say ~~that~~ that as far as I'm concerned, I think the information— at least our counsel has made it clear, that the information contained in the file ~~has been~~ directly in the Premier's ~~file~~ that it involves a meeting ~~at which he was in attendance~~ and I feel that the file has to be produced. Whether the names are blotted out or not, has to be worked out. It's my own personal view that if the counsel for Canada Square is ~~concerned~~ concerned, as obviously he is, then I would suggest that that be done. But the file, I feel, has to be produced in view of its importance.

Mr. Chairman: Mr. Renwick?

Mr. Renwick: Mr. Chairman, if I may just comment about the point which Mr. Walker and Mr. Gaunt have referred to. As I understand our counsel's position, ~~that~~ although it may be that in the initial instance the name of the bank and the name of the officials with ~~which~~ whom the discussion took place may not at this time, in his opinion, be relevant, ~~that~~ the mere fact of the production with those names excised from it at this time would not ~~include~~ ~~him~~ at a later time from considering that its disclosure was relevant, I think we ought to clear the ~~air~~.

Mr. Shibley: That's right, Mr. Renwick. I made that clear to Mr. Finlayson.

Mr. Renwick: I just wanted to make sure.

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Mr. Shibley: When I discussed it with him on the 16th, whoever made the suggestion to blot it out, I took it that if identity of the bank and the individuals was the problem, then, fine, I would go along with having that part excised, but subject to my freedom to consider it relevant later and have disclosure made. I don't think that the offering of doing that today adds anything to what I agreed to do with Mr. Finlayson on the 16th. He has since had the ensuing number of days to consider and reconsider that offer; ~~and~~ ^{and} the committee offering to excise the names alone doesn't appear to have satisfied him when I made the offer to him a week ago. So, my concern now and the reason I've been obliged to raise it before this committee, ^(is) ~~I~~ really don't understand Mr. Finlayson's comments as directed to me personally because he has left me with no choice, ~~really~~ really, but to come to the committee and say I want this committee to order him to produce that file, in that he has refused me the file. He has refused to go along with producing the ~~deeds~~ documents excised as to the names of the bank and the individuals. So, I am at a point ^{where} ~~I~~ am quite prepared to continue on other subjects ~~with~~ with the Premier, but in fairness to the Premier himself, frankly, I wanted to be able to elicit from him his position vis-à-vis what was going on between Mr. Moog and these Swiss bankers at that time.

Mr. Shairman: Mr. Shibley, may I ask you a question?

Mr. Renwick: Mr. Chairman, just before ~~you~~ ^{is} go on. The reason for my interjection, Mr. Chairman, ^{is} I wanted the committee members to be perfectly clear that if the decision was made that the file was to be ~~be~~ ^{more} produced, that ~~it~~ ^{there} was no undertaking by the committee that the name of the institution or the officials, if deemed relevant at a subsequent time, might very ^{well} ~~well~~ have to be put in evidence.

Mr. Chairman: I am assuming that that would be a matter for another ruling or further consideration; ~~we~~ ^{if} we take the first step. Mr. Shibley, do the letters have relevancy in

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your mind, even though the Premier has said that they may or may not have taken -- have passed at this meeting; he didn't see them. They still have some relevancy?

Mr. Shibley: Mr. Chairman, I am going to ask this committee to insist on the production of that file in any event. When Mr. Moog is in that witness box he is going to be taken over that correspondence very carefully, as it relates to his endeavours respecting this building. And whether it's produced now or then, I can assure you it is relevant material. My reason for asking for it now is I want to get the Premier's position as of record, vis-à-vis the ~~document~~ documents. And whether it is produced now or later my concern is that when we get to Mr. Moog it will be too late, really, to ask the Premier what he knew about those documents and that correspondence, or what he didn't know about them. ~~And that's what's concerning me in terms of....~~

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~~... the Premier what he knew about those documents and that~~
~~correspondence or what he didn't know about them and that~~
is what is concerning me in terms of timing, but I can assure
you there is no way that I am prepared to back away from
insisting on the production of that file, ^h sort of this
committee ruling that it is not to be produced in the face
of what I have told you.

Mr. Chairman: Well, you are suggesting, ~~is~~
~~regarding~~ its relevancy with the Premier, it is certainly
relevant later on with Mr. Moog.

Mr. Shibley: There is no question in my mind
about that.

Mr. W. Newman: Mr. Chairman ...

Mr. Chairman: Any further representation?

Mr. W. Newman: I'd just like to ask you, Mr.

Chairman, I assume that if this evidence is called for and
it is properly entered, that there will be a further decision
made by this committee before any names are released regarding
the bank or the individual?

Mr. Chairman: That would be my suggestion, yes.
If there are no more comments, we will recess until 12.00,
Mr. Allan?

Mr. Allan: Just to say very briefly, Mr. Chairman,
that as I reflect upon the procedure that has carried on
during the long hearings of ~~these~~ this committee, I have noted
that ~~these~~ the information that our ~~expert~~ counsel has solicited
has been relevant and it is largely on that basis that I accept
his word now that this information is relevant and would support
the demanding^{ol} it.

Mr. Chairman: Don't give him too much praise, sir.

Mr. Allan: I'm not praising him.

Mr. Chairman: We are adjourned - yes, Mr. Hodgson -
Glen Hodgson.

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Mr. Gaunt: You are stating a fact, Jim.

Mr. R.H. Hodgson: Mr. Chairman, perhaps as this
is information of August, 1972 -

Mr. Shibley: 1971.

Mr. R.G. Hodgson: Or 1971, it could be very
necessary information. I might suggest to you, Mr. Chairman,
that in view of the presentations of Mr. Moog's solicitor
would it be in order for me to suggest to you, Mr. Chairman,
that a member of each opposition party, along with yourself
and our ~~LEGAL~~ counsel, discuss this matter and then report
back to the committee on resuming our meeting again?

Mr. Bullbrook: Not needed.

Mr. Chairman: Well, we will consider that at
recess time, by all of us, I don't mean just by myself. It is
a suggestion. We are adjourned until 12.00. Mr. Bullbrook?

Mr. Bullbrook: You want to adjourn until 12.00?

Mr. Chairman: That is my thought.

Mr. Shibley: ~~Mr. Bullbrook~~: I don't want to adjourn. I want to
go on. The Premier is ~~not~~

Mr. Bullbrook: Do you require some adjournment?

Mr. Chairman: Well, I don't. I just ~~am~~ is everybody
of a mind to go on - all the committee members?

Mr. ^{Shibley} ~~Walker~~: I'd like to go on.

Mr. Renwick: Mr. Chairman, I'd like to have a recess.

Mr. Chairman: All right. ^{until} 12.00 o'clock.
A

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fvk

The Committee resumed at 12.00 ~~o'clock,~~
~~p.m.~~

Mr. Chairman: Ladies and gentlemen, I call the meeting back to order. I was hoping that Mr. Renwick would be here because he wanted to reserve his opinion. Mr. Renwick, I'm just waiting for you in case you had something further to say in connection with this matter on which I'm asked to make a ruling. You wished me to hold it over for recess.

Mr. Renwick: Mr. Chairman, I appreciate the courtesy in waiting until I took my seat. I had the opportunity ~~the~~ during the recess ~~of~~ of speaking with counsel for Canada Square, and with counsel for the committee and ~~I~~ I appreciate the opportunity to have those few minutes to do so. I am satisfied that the public interest would have to over-ride the private interest of Canada Square ~~and~~ I am satisfied as to the statement by counsel to the committee of the relevancy of the matter. I was satisfied about that before the recess and I would ask, Mr. Chairman, that the file be produced to the committee.

Mr. Chairman: Mr. Finlayson, have you anything to add?

Mr. Finlayson: Mr. Chairman, I made my submissions and I don't think I can add much to them. I certainly ~~the~~ the last thing I would want would be that the entire file be produced to the committee as such because this is, of course, precisely what I'm concerned about, that once it's produced to the committee as a whole, then it can be reproduced by the press and the other media and it's produced to the whole world. At the very ~~worst~~ worst, the situation I would urge on the committee is that this thing should be produced in some sort of a form where these names aren't identified. There is, in my respectful submission, a very sound reason, ~~that~~ ~~if~~ if everybody wants to look at the thing ~~that~~ ¹⁵ they do it in camera ~~because~~ ^{what} ~~what~~ I object to about all this is to be put in a position of being defensive about this file when it's already been ~~as~~ shown to the committee counsel, and volunteered to him. ~~As~~ As I say, I would be prepared to

show it to him again and I'm ~~xx~~ also prepared, as I said, to show it to the Premier. I would also be prepared to show it to individual members of the committee or any of that nature just to demonstrate that there isn't anything in ~~xxx~~ it which affects your deliberations. Mr. Shibley seems to dig his heels in and says: "I insist, desire and require", and that appears to be the end of it.

Mr. Bullbrook: I'm wondering if you could simply clear in your ruling that the deletions that you anticipate at the wisdom and direction of the committee counsel, are not to be construed as any undertaking that this committee might not deem it necessary, in the future, to disclose the deletions?

I think we're ready for the Premier, Mr. Moore, if you can locate the Premier ~~we~~ we'll proceed.

(Tape H-1302 follows)

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~~Mr. Shibley: Mr. Premier, you are just getting a hint as to why this committee has sat so long and made the progress we have.~~

I want to take you to the occasion to which you referred earlier of a discussion between yourself or at least comment made by MR. Moog to yourself respecting the Hydro building. What was the first occasion on which you recall any reference by Mr. Moog to you in that respect?

Hon. Mr. Davis: Mr. Shibley, my best recollection is the latter part of August of '71. As I said - I was going to say a few ~~moments~~ moments ago, when it first was, ~~when~~ and I remember it very well on the basis that Mr. Moog said Hydro ~~and~~ had approached him with respect to the possibility of the head office building, I think it is fair to state that that was really the extent of the conversation. I made it clear in my own way that, fine, but let's chat about something else, that was really the extent of the conversation.

Mr. Shibley: So the point of time was the latter part of August ~~the latter part of August~~

~~Europe~~ Hon. Mr. Davis: It was some time after we came back from Europe and it was to my best recollection before September, because starting the first week in September my mind was on other things that were to be forthcoming.

Mr. Shibley: Yes. I want to direct your mind now to the month of August, 1971 and ask you what was the first occasion on which you recall any reference to the head office building by anyone from Hydro?

Mr. Chairman: It is a P L A C E to have a good time.

Mr. Shibley: To be precise, it was on the 3rd

Mr. Shibley: To be precise, it was on the 3rd

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of August, 1971, is that correct?

Hon. Mr. Davis: That would be, I think, very close.

Mr. Shibley: Yes. And on that occasion - I
am having produced to you, Mr. ~~late~~ Premier, the transcript of
Mr. Gathercole's testimony which is in Hansard, Tape 97-1



(Tape H-1303 follows)

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~~which is in Horwood's 97-1~~ wherein he covers the same subject of the first communication with you and at the bottom of 97-1, the very last question:

"Mr. Bullbrook: Did you name those developers to the Premier?

"Mr. Gathercole: I have no recollection of naming them. There were several of them, but I have no recollection of naming any particular developer.

And then skipping down:

"Mr. Bullbrook: At any time did you ever discuss with the Premier that Canada Square was one of the companies with which you were dealing in connection with the possible development of the head office site?

"Mr. Gathercole: At one time I mentioned that our people had been up to see the OISE building and that they had been quite impressed by it.

"Mr. Bullbrook: Was that at the Pickering discussion?

"Mr. Gathercole: No, I think that was at an earlier time. That is my recollection.

"Mr. Bullbrook: You might have related that to us previously. I don't recall that you had had a former discussion with the Premier.

"Mr. Gathercole: No, I wasn't asked, but I had had at an earlier time not a discussion, but I mentioned that we were proceeding and this would go back to June or August of, I guess, 1971, and that we were anxious to get ahead with our building.

"Mr. Bullbrook: Had you advised the Premier that you had attended at the OISE site?

"Mr. Gathercole: I hadn't mentioned anything of that kind."

So that, from Mr. Gathercole's testimony, Premier Davis, it appears that - at the middle of Page 97-2 - "At one time I mentioned that our people had been up to see the OISE building and that they had been quite impressed by it."

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Do you recollect Mr. Gathercole having made that observation to you on the occasion of the meeting which you appear now to have pinpointed as having been August 3?

Hon. Mr. Davis: Well, the only other part - just glancing at the testimony, Mr. Shibley, Mr. Gathercole also says and this would be, I think, consistent with what I have to say, as far as I am aware I didn't mention that. It is conceivable that I might have mentioned that some of our people had been there but I have no recollection of having ~~done so~~ done so.

Mr. Shibley: No, I think you are reading it out of context, with respect, sir.

Hon. Mr. Davis: Yes, I - no, but I ~~am not~~

Mr. Shibley: What he is referring to when he says that is whether he told you that he himself had gone to OISE. In the earlier exchange he makes it quite clear and there is no equivocation, ~~that~~ ^{that} he starts off and I'll go back, at 97-2, a quarter of the way down - "At any time did you ever discuss with the Premier that Canada Square was one of the companies with which you were dealing in connection with the possible development of the head office site?"

"Mr. Gathercole: At one time I mentioned that our people had been up to see the OISE building and that they had been quite impressed by it."

And then he says that was in June or August and then Mr. Bullbrook asked him, "Had you advised the Premier that you had attended at the OISE site?", and he says, "I hadn't mentioned anything of that kind."

"Mr. Bullbrook: You hadn't?"

"Mr. Gathercole: As far as I am aware, I didn't mention~~ed~~ that. It is conceivable that I might have mentioned that some of our people had been there, but ~~I have~~ ^{I have}..." I'm sorry, he does somewhat go back on it. "It is conceivable that I might have mentioned that some of our people had been there,

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but I have no recollection of having done so.

"Mr. Bullbrook: Could you tell me, was there every any response from the Premier as to the qualities and abilities of Canada Square?

"Mr. Gathercole: No."

Well, then, I'm sorry, Mr. Premier, you are quite right. He did shift positions somewhat on me - on us, in that respect. Initially, when he was asked the question, he said "At one time I mentioned that our people had been to see the OISE building and that they had been quite impressed by it."

Have you any ability to assist us as to the content of his communication to you on August 3?

Hon. Mr. Davis: Mr. Shibley, I - like two or three other matters that you asked me to do my best to recall, this was one of them and I have to be - I can't say that he didn't. I think that if ^{he} had and if it had made an impression on me I would remember it and I don't remember it.

Mr. Shibley: Yes, all right. In any event, August 3

Hon. Mr. Davis: But that does not mean that he didn't. Please, I want that understood. You know, it's nearly two years ago. It was at a social gathering. It was a very casual, informal reference as best I can recall it and I would not want to say the chairman did not refer to the fact that some of the people from Hydro had been to the institute, but I don't recall him having said that to me.

Mr. Shibley: All right. Now, Mr. Premier,

~~and I have no recollection of having done so.~~

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~~to the fact that some of the people from Hydro had been to the~~
~~Institute, but I don't recall him having said that to me.~~

~~Mr. Shibley: All right. Now, Mr. Premier.~~

Hon. Mr. Davis: And there was no reference, to go on, there was no reference whatsoever to Canada Square or reference to quality or anything else.

Mr. Shibley: So, that we are now in the position that the earliest date that you possibly knew of Mr. Moog's involvement would have been August 3 or late August when he made comment to you?

Hon. Mr. Davis: It was late August. Because with great respect, Mr. Shibley, even if the Chairman of Hydro did refer to the Institute, there was no reference to Canada Square, or to Mr. Moog.

Mr. Shibley: Mr. Premier, you knew though that OISE had been constructed by -

Hon. Mr. Davis: No question about that. But I say, with respect, that the fact that Hydro may have visited the Institute, it is not necessary, if this had been known to me on August 3, that I would relate this to the fact that Canada Square might or ~~it~~ might not have some discussions with Hydro. I mean, I think a great many people have visited the Institute building.

Mr. Shibley: All right. So, that -

Hon. Mr. Davis: I mean I just don't want to make any judgements of that kind.

Mr. Chairman: If you came to that conclusion you would have had to have done it by inference.

Hon. Mr. Davis: Yes, and I think you're giving me more credit than I deserve, Mr. MacBeth.

Mr. Shibley: Well then, Mr. Premier, we have you with knowledge of Moog's involvement with Hydro then in late August, 1971, because he made the comment to you?

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Hon. Mr. Davis: He made that comment to me, Mr.

Shibley, yes.

Mr. Renwick: Mr. Chairman, Mr. Shibley, would you ask the Premier, so far as the Chairman of Hydro's comment to the Premier, is it established that it was August 3, the Boyer farewell dinner, or was it at the earlier Jim Snow barbecue?

Mr. Shibley: I think, Mr. Renwick, the Premier's testimony is that his best recollection was that it was at the reception for Mr. Boyer, which we've now identified as August 3. And ~~you~~ you'll notice the Chairman himself, when he volunteered this information, did say it might have been June or August. And I think the Premier is now saying that it was August 3.

Hon. Mr. Davis: To the best of my recollection, Mr. Renwick, it was the August gathering.

Mr. Renwick: Thank you.

Mr. Shibley: All right. So then, I would ask you now, Mr. Premier, to look at Hansard for November 21, 1972, at page 4709 -

Mr. Chairman: You're not ready with a copy, I gather, for the Premier?

Hon. Mr. Davis: I think I know what's in it, but I don't -- no, I haven't got a copy of Hansard.

Mr. Chairman: Mr. Moore is getting one, is he?

Mr. Shibley: I'll read it to you, sir. Mr. Nixon had asked a question, "Can the Premier tell the House if, in fact, he did approve the decision taken by Ontario Hydro to put up this building on a lease-back basis in a situation somewhat similar to that we've entered into with the Workmen's Compensation Board and Fidinam?"

Your answer, sir, was, "Mr. Speaker, the question of the new facility for Hydro really was never dealt with by Cabinet. It is not a matter of Cabinet decision. The Chairman of Hydro suggested to me some months ago that they wished to proceed with

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their new facility. It has been on the drawing boards or under consideration, I believe, since 1967 or 1968. I indicated at that time that in my view whatever was done should not influence the capital situation. I understand that Hydro have gone ahead on the ~~new~~ basis that it does not require them to borrow, and as a result it has not affected the capital situation."


Now, dealing with that statement to the House, sir, the first portion of it is, "The Chairman of Hydro suggested to me some months ago that they wished to proceed with their new facility." To what event were you referring when you made that statement?

Hon. Mr. Davis: Not the event in August, Mr. Shibley. That would refer to the discussion with the Chairman of Hydro at the Pickering opening. Not the one in August.

Mr. Shibley: So, that that would be in February of 1972 -

Hon. Mr. Davis: That is correct.

Mr. Shibley: - to which you were referring when you made this statement to the House. And I take it, from your testimony today therefore, that whatever was said to you by Mr. Gathercole on August 3 was not recalled ~~back~~ by you at the time you made this response to the House?

Hon. Mr. Davis: No. I think that really the discussion in February of 1972 - and I assume we'll get to that because there is a point I want to make about that discussion. That that was ~~the~~ really from my standpoint, the initial time that it ~~became~~ 

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~~that really from my point of view, the Hydro situation~~
became apparent to me that Hydro was in fact -- I shouldn't say they weren't serious, but I personally understood that they were on the verge of going ahead and making some form of arrangement for their head office accommodation.

Mr. Shibley: Just returning to the statement in the House, we might as well complete it while we are dealing with it, there is reference here to:

"I indicated ~~some~~ at that time that, in my view, whatever was done should not influence the capital situation."

Would you please give your explanation as to what you meant by that comment?

Hon. Mr. Davis: Yes, Mr. Shibley, I meant by that comment that whatever decision Hydro made, in my view, and I was giving my view to the Chairman, that it should be a decision that would not affect the capital borrowing position of either the province or of Hydro, and ~~as~~ the two are quite related. That was, to the best of my recollection, in February, not too far off the time of the provincial budget when the question of capital would have been, or borrowings, would have been one of my priorities, ~~but~~ I want to say this about the discussion in February Mr. Shibley, I want to be completely fair, and I can't tell you exactly what was said. It was not a lengthy discussion, but I would have to say this; that I think it would be fair for the Chairman of Hydro to assume from that discussion that the government would not object to their proceeding with ~~their~~ ~~an~~ their head office building. I think the chairman of Hydro could take from that discussion that from our standpoint there would be no negatives. In other words, we would not say, for economic reasons as was I think the basic reason in '68 or '69, that we would object to the moving ahead with their new facility. I have to say that. I think that if I were Chairman of Hydro I would have taken that from the conversation.

Mr. Shibley: Yes. Well, Mr. Premier, was something said by Mr. Gathercole at that time to indicate that they were going to proceed on a lease-purchase basis to construct their building?

Hon. Mr. Davis: I don't think there was any, Mr. Shibley, discussion in a detailed way as to exactly what procedures; nor was there any discussion as to the people who might or might not be involved in proposals or discussions with Hydro.

Mr. Shibley: Were you alert as at February, 1972, to the circumstance that Mr. Moog was one of the developers contending for this project?

Hon. Mr. Davis: Mr. Shibley, I would be, I am sure, aware that it was more than likely that Canada Square would be one of those.

Mr. Shibley: Yes. So that although Mr. Moog and his company's name was not mentioned by either yourself or Mr. Gathercole, I take it, is that right?

Hon. Mr. Davis: Yes.

Mr. Shibley: I am still staying with February for the moment. ~~In~~ in your mind you realized that Canada Square was one of the contending developers?

Hon. Mr. Davis: I assumed that. I think it is fair to state, Mr. Shibley, that after Mr. Moog's mentioning to me that he was ~~discussing~~ discussing and ~~he~~ had been approached by Hydro, I think it would be quite right for the committee here to assume that I knew that more than likely I had it in no definitive sense, but to say that I didn't know they were would be not correct. I think, trying to search my mind, in February of '72 I would have to say that I would see ~~now~~ that Canada Square would be one of those.

Mr. Shibley: And in your statement you said, of course, "I understand that Hydro have ~~not~~ gone ahead on the basis that it does not require them to borrow and as a result it has not affected the capital situation." I ~~like~~ take it then that you had in mind that Hydro were going to proceed on a lease-purchase transaction?

Hon. Mr. Davis: I think this would be a natural assumption Mr. Shibley, yes.

Mr. Shibley: With one developer from among a number, one of whom was likely to be Canada Square?

Mr. Hon. Mr. Davis: Right.

Mr. Shibley: Now, then, did Mr. Gathercole make any reference to you, or did anyone on behalf of Hydro make any reference to you, of the efforts of Canada Square to obtain this contract? Let us take the period up to ^{February 1972} 1972.

Hon. Mr. Davis: No, there ^{was} no communication from anyone in Hydro, to the best of my recollection, and, as I have already stated, from Mr. Mong or from anyone else for that matter, from the latter part of August until February of '72, related to the head office building.

~~Mr. Shibley: I think that is all. Is that correct, Mr. Davis?~~

~~that is correct, Mr. Davis.~~

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~~(Hon. Mr. Davis)~~

~~latter part of August until February 1972 related to
the head office building.~~

Mr. Shibley: All right. So you've already told us that you were not aware of the meeting between Mr. Moog and Mr. Candy on June 11 until this committee convened. Is that correct?

Hon. Mr. Davis: That is correct. ~~And it's~~

Mr. Shibley: And I take it from your answer that neither were you aware that during the month of August that drawings were being provided to Canada Square by Mr. Candy? You weren't aware of that until this hearing was convened.

Hon. Mr. Davis: Until the hearing commenced? Now, I can't say that. What did the article in the Globe and Mail say, because I read that article. Until that period of time, you're quite right.

Mr. Shibley: Until the issues before this committee were developed by that article.

Hon. Mr. Davis: Mr. Shibley, let me just say I had no knowledge from Hydro, or anyone else, as to what discussions were going on internally within Hydro, or with anyone else, from the end of August until, as I say, covering that period until Mr. Gathercole and I discussed this matter in February.

Mr. Shibley: That answer then would encompass a meeting that Mr. Moog had with ~~Mr.~~ Mr. Candy on August 25?

Hon. Mr. Davis: That is correct.

Mr. Shibley: Mr. Moog never told you he'd ~~talked~~ met with Mr. Candy?

Hon. Mr. Davis: He never told me that (a) he was meeting with Mr. Candy or, (b) when he was meeting with Mr. Candy. I knew nothing of any meetings that Mr. Moog had.

Mr. Shibley: Mr. Premier, there is an exhibit, a document, exhibit 148 which I ask to ~~be~~ be produced to you. This a document dated August 31, 1971 ~~wherein~~ wherein Mr. Candy remits to Mr. Moog "a copy of our 1970 annual report which is just off the press together with a copy of a booklet entitled 'Ontario Hydro-1970'

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explaining our financial position and the scope of our operations.

"I trust this information will be useful for your purpose."

I would ask Mr. Finlayson to indicate whether ~~was~~^{I'm} going to get that file.

Mr. Chairman: I've already ruled ~~that~~^{that} it be produced. ~~and~~

Mr. Shibley: All right. There's a letter in ~~the~~ existence from Mr. Moog to one of the Swiss bankers dated September 9, 1971 enclosing the 1970 annual reports of Ontario Hydro. Did Mr. Moog ever make you aware of the circumstance that he was ~~soliciting~~^{soliciting} from Ontario Hydro this information in order to pursue matters with those self-same Swiss bankers?

Mr. Finlayson: That is a complete ~~was~~ mis-statement of the facts. Mr. Candy is sending him a copy of the Ontario Hydro 1970 report, which couldn't have been that hard to get a hold of. What do you mean soliciting this kind of information for the purpose that you put? You've been making a lot of conclusions, Mr. Shibley, and you haven't even examined Mr. Moog.

Mr. Shibley: I intend to examine Mr. Moog, Mr. Finlayson.

Mr. Finlayson: Then why don't you wait there and hear what his version is.

Mr. Shibley: Again, Mr. Finlayson, you are making it very awkward.

Mr. Chairman: I think the question is fair, Mr. Finlayson, It may have had some inflections or -

Hon. Mr. Davis: Can I answer it very simply and just say the first day I knew of this was when Mr. Shibley showed it to me.

Mr. Shibley: I didn't show it to you. I think I told you about it.

~~Max~~ Hon. Mr. Davis: No, with great respect, Mr. Shibley, you showed me -

Mr. Shibley: I showed you the memorandum.

Hon. Mr. Davis: That is correct.

Mr. Shibley: Yes, I'm sorry, sir.

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Hon. Mr. Davis: And that I recall.

Mr. Shibley: But I think it important to establish your position, ~~is~~ sir, as a matter of record. Mr. Moog was not letting on to you whatever he was doing with Mr. Candy and was not letting on to you whatever he was sending over ~~to~~ to these Swiss bankers?

Hon. Mr. Davis: He was not letting on to me anything.

Mr. Bullbrook:

Mr. Bullbrook: You had requested him not to ^{I suppose?} ~~let you~~

~~know in that sense~~

Mr. Shibley: No, no. I want to get that cleared up.

Mr. Bullbrook:

~~I DON'T THINK YOU SHOULD~~ ~~I don't think you~~ ~~should~~ ~~leave it up in the air~~ ~~business~~ ~~In fairness to the Premier.~~

~~Mr. Shibley: I was just going to say, Mr. Premier Davis~~

(Tape H-1307 follows)

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(Mr. Shibley)

~~I want to get that cleared up.~~

~~Mr. Bullbrook: In fairness to the Premier~~

Mr. Shibley: I was just going to say, Mr. Premier Davis, the only time Mr. Moog made any comment to you was

Hon. Mr. Davis: That is correct. That latter part of August, I did not know (a) about this exhibit until you showed it to me, and I did not know that Mr. Moog may or may not have requested the 1970 report of Ontario Hydro, and I do not know for what purpose Mr. Moog would have made that request of Mr. Candy.

Mr. Bullbrook: If he did.

Hon. Mr. Davis: If he did, thank you very much, Mr. Bullbrook.

Mr. Shibley: Now, was there any occasion on which you had discussed the capital situation of Hydro with anyone on behalf of Hydro, other than the occasion referenced in your statement to the House on November 21?

Hon. Mr. Davis: I wonder if you could give me some help

Mr. Shibley: As it relates to the head office?

Hon. Mr. Davis: No. As it related to the head office building, no. As it relates to the general borrowings of the province, of Hydro, Mr. Shibley, there could have been conversations on that. I don't think really there were with the chairman or of any of the Hydro people, but there could have been internally, but there were no discussions with me with any one related to the financial arrangements for the proposed new head office building of Ontario Hydro.

Mr. Shibley: During the months of September and October I take it that you were wholly engaged in the election which took place at the end of October?

Hon. Mr. Davis: I was really rather completely involved, I think it's fair to state.

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Mr. Shibley: And is it fair to record your ~~own~~ posture vis-à-vis Hydro is that it was the last thing in your mind during that period of time?

Hon. Mr. Davis: Yes. I hope the people here from Hydro won't take offence but it is true.

Mr. Shibley: Yes. So that, whatever they were doing internally throughout that period of time was not a matter of communication to you or from you of any kind, directly or indirectly? Is that correct?


Hon. Mr. Davis: No. Mr. Shibley, they wouldn't have been able to find me. I mean, they ~~couldn't~~ could have, but it meant a lot of travelling.

Mr. Shibley: Have you any information, even as of this date, as to whether Mr. Moog told Mr. Candy, either when he met him on August 25, 1971 or at any time thereafter, of the fact of your visit with Mr. Moog to the Swiss bank on August 13, 1971?

Hon. Mr. Davis: No, I have none, Mr. Shibley. I have no - I can be of no help to the committee as to any discussions that went on with - well, with anyone else where I was not present, but I just have no - nothing I can help the committee with as to any possible discussion of that situation.

Mr. Shibley: All right. So, that, nothing that anyone has told you, including Mr. Moog, right up to the present time, would assist this committee to determine whether Mr. Moog, when he returned from that trip, ~~then~~ went back to Mr. Candy and told him what had happened?

Hon. Mr. Davis: That is correct.

Mr. Shibley: And, Mr. Premier, I take it that of course, as of April 30, 1973, when ~~you~~ 

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(Mr. Shibley)

~~Mr. Premier I take it that at approximately April 30, 1973, when~~
you convened this committee or announced a decision that this committee should be constituted, it certainly was not a matter in your mind that there had been any ~~if there had been~~ any such communication between Mr. Moog and Mr. Candy?

Hon. Mr. Davis: None whatsoever, Mr. Shibley.

Mr. Shibley: I won't bother you with the reference but I will tell you this in general terms. You have made reference to Mr. Candy and it smacked of the full expectation on your part that he would acquit himself quite well. Was that not your then mental posture?

Hon. Mr. Davis: Will you say that again slowly -- acquit himself quite well, where and when?

Mr. Shibley: Well, in the Hansard at 1388, I will read it to you. It is very short. Mr. Nixon had made a supplementary question:

WM "Mr. R. F. Nixon: Why didn't the Premier table the other proposals when he was asked for them? Does he remember he said he would speak to Hydro to see if he could get them or ~~some~~ something like that?

"Hon. Mr. Davis: Mr. Speaker, I am sure when this is before the Select Committee, the chief architect would be delighted to ~~discuss~~ discuss this with the members of the committee and present it in a way that ~~was~~, hopefully, will be fully understood by the members of the committee and the public."
So certainly you had confidence in the ability of -- your then thinking was that you were highly confident in the ability of Mr. Candy to fully satisfy this committee as to the matter of the letting of ~~this~~ this contract?

Hon. Mr. Davis: Well, I was quite confident, Mr. Shibley, that Mr. Candy, being a man of integrity, would tell the committee just as much as he possibly could related to this circumstance. I honestly can't, nor would it be proper for me to express a judgment or an opinion as to Mr. Candy's professional ~~skill~~ capacity. I

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just know that he has been there a long time and has been, I think, a very valued employee of the Hydro-Electric Power Commission, but I can't judge a person's professional capacity.

Mr. Shibley: Mr. Premier, there is an indication in some of the material or on a page of material of Canada Square and I am not sure of the significance of this:

It is October 1, and, I think it is for the year '72, Treasury Board. Was the Treasury Board in any way concerned with the letting of this contract?

Hon. Mr. Davis: No. Treasury Board was not -- as a matter of fact, would it still be Treasury Board or Management Board? It doesn't matter. It was, to my ~~own~~ knowledge, not involved, nor was Cabinet.

Mr. Bullbrook: I am wondering; is it appropriate to identify that? *It excites interest.*

Mr. Shibley: That is all there is to it. Among other scribbled notes there is mention of Treasury Board and I just wondered whether I had missed something.

Mr. Bullbrook: Well, I want to identify it in my own mind so I understand it. This is a note on some material that you acquired from a ~~the~~ Canada Square file?

Mr. Shibley: Yes. I wasn't sure that the Premier ~~could~~ help enlighten me in respect of the involvement, if any, of the Treasury Board.


I'd like to move forward with you, Sir, to November of 1971, ~~and~~ because you had a meeting with Mr. Gathercole on November 19 of that month, to ask you, and I might tell you sir & so that your own information is complete and to refresh the memory of the committee, November ~~that~~ '71 was a month of some activity within Hydro. In the early part of the month there is memoranda to the effect that they should create specifications of broad ^{parameters} to deal with some developers, ~~and~~ On November 22 and November 25 the memoranda indicate that they were singling out an individual developer with what they say was the purpose of salvaging some of the plans and, after some questioning I think, who was identified

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(Mr. Shibley)

as Mr. Moog being the developer to whom reference was being made.
Now, I am concerned to get your position as a matter of record, Sir,
as to whether you had any communication with or gave any
instruction or took any step within the month of November which
had anything to do with what ~~was going on internally~~



Tape H 1309 follows

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(Mr. Shibley)

~~within the month of November which has anything to do with what~~
was going on internally within Hydro, referable to the decisions taken or the discussions reflected in the memoranda of the latter part of that month to which I've made reference. And I'm sorry to be so general, but I think you understand the import of what I'm asking you about.

Hon. Mr. Davis: Yes. I had no discussions, communications with anyone at Hydro. And as I say, my communications as with the Chairman of Hydro during the month of November that would relate to any of the internal memorandums.

Mr. Shibley: Right. So, that when you met with Mr. Gathercole, sir, on November 19 -

Hon. Mr. Davis: There was no discussion of Hydro head office building, Mr. Shibley, at all.

Mr. Shibley: And in that same memorandum of November 25, there is reference to receiving so favourable a rate of financing from him and so on, had your office received any information as at that time as to dealings with Mr. Moog, and in particular, what arrangements he was making respecting financing?

Hon. Mr. Davis: None whatsoever.

Mr. Shibley: And he certainly had not communicated anything to you?

Hon. Mr. Davis: Not a thing.

Mr. Shibley: Is that correct?

Hon. Mr. Davis: That is correct.

Mr. Shibley: If he had had correspondence referable to the financing of this building within this period of time, and I'm now thinking of up to November 25, and that correspondence was with the Swiss bankers that had been visited in August 1971, you were not aware of that correspondence?

Hon. Mr. Davis: That is correct.

Mr. Shibley: I gather, sir, that meetings with Mr.

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(Mr. Shibley)

Gathercole were not unusual throughout this period of time?

Hon. Mr. Davis: No, Mr. Shibley, and I wouldn't confine it to this period of time. Meetings with Mr. Gathercole are -- well, I think they've been accelerated in the past year or so because of the Task Force and also because of the energy situation which the province faces. But discussions with the Chairman of Hydro are not unusual. That is, the number. But I would say -- well, I can't speak from that much experience. I would say that there were more in the past, say, year and a half because of the Task Force than ^{might} otherwise have been the case.

Mr. Shibley: Right. So, that the event of numerous meetings with Mr. Gathercole throughout the period of time is not really significant in that, as you say, ~~this~~ this was the period of time within which you were ~~having~~ heavily engaged in establishing and moving forward the work of Task Force Hydro. Is that correct?

Hon. Mr. Davis: That is correct. And a number of other matters directly connected to Hydro and not connected, in any way, to the head office.

Mr. Shibley: Now, on the other hand, Mr. PREMIER, did Mr. Gathercole never take any of the opportunities presented by these numerous communications with you where he actually visited with you, met with you, to raise again the subject of the head office building?

Hon. Mr. Davis: Mr. Shibley, he did not.

Mr. Shibley: So, that we can take it that there was mention made of it to you on August 3, 1971, and the next mention to you by Mr. Gathercole was not until February, 1972, at the Pickering opening?

Hon. Mr. Davis: This would be correct.

Mr. Shibley: I realize you've answered some of these questions in general terms, Mr. Premier, but I want the record to be explicitly clear in respect of your own position.

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(Mr. Shibley)

It was not known to you, I take it from your answer, that as of the end of November, Hydro were contemplating dealing exclusively with Mr. Moog for reasons they've explained on a lease-purchase transaction?

Hon. Mr. Davis: That is correct.

Mr. Shibley: In the November 25 memorandum, ~~attached~~



H 1310
Tape ~~1310~~ follows

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(Mr. Shibley)

~~In the Handbook of the Corporation~~, Exhibit 26, Mr. Premier,
reference is also made - I ask that it be produced to you, ^{as} If you
~~to~~ look at page 2, sir.

Mr. Genest: What is that exhibit?

Mr. Chairman: Twenty-six.

Mr. Shibley: Twenty-six. If you look at paragraph 2,
the last sentence in that paragraph: "If we conclude that this
is the course to follow the fact that the same developer had had
both jobs might involve an additional point of criticism for
both ourselves and the Government for which we should be prepared".
And I will ask you to note that there is reference to a point of
criticism" for both ourselves and the government; ~~was~~ it ever
the subject of any communication between anyone on behalf of
government and anyone on behalf of Hydro that the selection of
Canada Square would be the subject of criticism because they
had done both the OISE building and the Hydro building? I am
talking now as at November the 25th, 1971?

Hon. Mr. Davis: No, Mr. Shibley, there had been
no discussion, no communication, I think it is fair to state
that there is a growing sensitivity in Hydro, that perhaps ~~has~~
has not always been present, that the problems of Hydro in the
public's mind sometimes become the problems of government. I
think it is fair to state, and I would hope the members of the
committee ~~who~~ understand the relationship, I think it would be
fair to state that the relationship between Hydro and government
is unique, They are in most respects really a relatively autonomous
organization and it is a principle that we have by and large
adhered to over the years, But I think it is also fair to state
that when there are difficulties at Hydro over matters like
transmission lines, etcetera, that they sometimes become the

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(Hon.MR.Davis)

government's problems too, that is as far as the public perception is concerned. But there was no communication, no discussion of this.

Mr. Shibley: Again, sir, I just want to make the record complete in respect of your own position; you had a meeting with Mr. Moog on November the 25th at three p.m. according to his diary and it says --

Mr. Finlayson: Just a minute, just a minute.

Mr. Shibley: May I please finish?

Mr. Finlayson: Well, where do you get that information that he had a meeting with him?

Mr. Shibley: Well, because the diary entry says "3. Bill Davis re Xmas". I was going to give that to you, sir, if only my ~~friend~~ friend had permitted me to complete it.

Mr. Finlayson: Well, two things. First of all, it ^{isn't} ~~is~~ Mr. Moog's diary, as was explained to you and, secondly, it doesn't say that he had a meeting ^{with him}, it ~~say~~ simply says, "Bill Davis re Xmas", on November 25.

Mr. Shibley: Now, Mr. Finlayson, ~~and~~ did I not understand your instruction to me to be that when it is indicated opposite a time of day that that indicates a meeting, whereas when it is only a telephone call, it's a note on the back of the sheet, as with many of these entries? Did you not tell me that?

Mr. Finlayson: What I told you, Mr. Shibley, and believe you me there is going to be no more of these meetings in which I have to end up by having to explain what I explained to you earlier, was that this book, which is an appointment book, was kept by a girl in the office and that nobody can recollect specifically what ~~book~~ took place on these particular days but generally speaking where a name appeared in that way

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(Mr. Finlayson)

it looked as if there was an appointment, but it didn't necessarily follow that it did. ~~and~~ Certainly we weren't asked any specific questions about that, except that you asked Mr. Moog some questions about it and he really couldn't remember whether he had telephoned or met him in person on that particular occasion. So don't put it to the witness as if that is evidence that there actually was a meeting on that ~~day~~ day.

Mr. Shibley: Are you through, Mr. Finlayson?

Mr. Premier, was there a meeting on the 25th of November at three o'clock with Mr. Moog ^{re} ~~through~~ Christmas?

Hon. Mr. Davis: No, Mr. Shibley, ^{re} My diary -
had
* and I ~~have~~ my staff at your suggestion check several names, Mr. Moog being amongst them, and there is no record in my diary of that afternoon at three ~~o'clock~~ ^{at 3} ~~meeting~~ with Mr. Moog. I think it is quite conceivable that on or about that date ~~Mr.~~ Mr. Moog and I - in fact, I would be very surprised if some time, and it could be within a few days one way or the other, if there is a note about Christmas, could have discussed on the phone and I think more than likely, because I think Mr. Moog has only been in my office on a number of times that I am certain in the

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~~old I think more than likely because I think Mr. Moog has~~
only been in my office on one occasion that I can recall in the two years plus some months. ~~It~~ It would be quite consistent that we did discuss our plans for the Christmas period but I have no record of a meeting.

Mr. Shibley: All right. So there was no meeting between you on that date? You had a - you may have had a conversation on or about that time. Was it ever any part of your conversations with Mr. Moog, on or before November 25, 1971, that he was making progress or had further dealings with Hydro?

Hon. Mr. Davis: No.

Mr. Shibley: When you had your discussions with Mr. Gathercole, or ~~his~~ comments that were exchanged between you at Pickering, was any mention made by you to Mr. Gathercole that he should speak to Mr. McKeough?

Hon. Mr. Davis: Mr. Shibley, I don't recall that in a specific sense. I would say it would not have been illogical for me to have said to the chairman of Hydro, as it relates to the matter of capital finance, to have a word with the Treasurer. I can't honestly say that I specifically asked him to do so but, to be as helpful as I can, it would not be illogical in that discussion to say "have a word with the Treasurer". But I honestly can't say that I requested the chairman to do so.

Mr. Shibley: I see. Did Mr. McKeough communicate with you respecting the Hydro head office building after his trip to Japan?

Hon. Mr. Davis: I don't believe so, certainly not in a way, Mr. Shibley, that it would stick in my memory at all. I don't think the Treasurer and I discussed the Hydro head office, really, in any sense as to whether ~~it~~ should or shouldn't or anything of that kind.

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Mr. Shibley: Yes. I'd like produced to you Exhibit 178, which is a letter to yourself from George Gathercole, dated May 16, 1972.

I'm sure you have now examined this letter and the ~~make~~ notations to the right? ~~_____~~.

Hon. Mr. Davis: Very carefully.

Mr. Shibley: Yes, ~~and~~ I would like your help to the extent that you can give it to this committee as to the content of that document. You will note that Mr. Gathercole said in the letter that ~~he~~ he had reviewed with Darcy McKeough the desirability of proceeding as soon as practicable on the construction of the office building, ~~and~~ he says he estimates certain things and "Darcy indicated that he was receptive and suggested that we start the governmental procedure ball rolling by having the Ontario Department of Public Works review it. I would be very pleased to have your advice."

And then it goes on:

"I would also be glad to have your advice as to whether there are any further developments on the extra high voltage transmission line from Nanticoke to ~~the~~ Pickering."

Now, dealing with the first part of that, wherein reference is made to the "governmental procedure ball rolling by having the Ontario Department of Public Works review it." I'd like your comments in that respect, sir.

Hon. Mr. Davis: Yes, Mr. Shibley, I think - well, I'd like to go to the last sentence in that paragraph, "I would be very pleased to have your advice." I think it is fair to state the chairman of Hydro did not get my advice.

I did not suggest to Mr. Gathercole that it be reviewed or discussed by ~~Government Services~~ ~~quite~~ Quite frankly, I don't recall discussing this letter at all with Mr. Gathercole as it related to the head office building. I think it is fair to state that perhaps I should have. ~~There was a~~

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(Hon. Mr. Davis)

~~Parliamentary Secretary~~ There was a meeting not too far off that particular date when Mr. Gathercole was in to see me, but my very best recollection is that either I did not have the letter with me or it just was not discussed and I did not suggest to the Chairman of Hydro that Government Services review it. I fully recognize there is a notation on the letter which is contrary to that, but that is my best recollection and not only is it my best, I think I am right.

Mr. Shibley: Yes all right. Now Mr. Premier why would you not, as in the case of OISE, refer the matter to the Ministry of Government Services for review when dealing with a project by Hydro for a head office building?

Hon. Mr. Davis: Well I think there is a very real distinction Mr. Shibley and there were two reasons. I will be very frank about the second. The first reason is there was no need to from the standpoint of government approval or government procedure. Hydro, I still am under the assumption and I assume it to be correct because no one has told me differently, has the legal capacity to do just what they are doing. I ~~must~~ must say there was another reason because I was aware that -- well let me phrase it this way: a) I didn't suggest it to the Chairman of Hydro and if we had discussed it, my advice would have been not to have Government Services review it as a first reason, and also for the second ~~real~~ reason that as I said earlier I was ~~surely~~ aware or assumed that Canada Square was one of those who were being considered and I felt because of the nature of the friendship between the head of Canada Square and myself, I was reluctant to have a government ministry become involved. I would say that if I had in fact communicated to Mr. Gathercole that would have been my advice and it would have been for those two reasons; but I want to make it very clear that my understanding of it and the legal capacity of Hydro is such that they did not require it. I think it is fair to state that the Institute was quite a different situation. Without getting into it at any great length, Ontario Hydro is a Corporation of a very substantial substance with the

(Hon. Mr. Davis)

capacity to do this. I think it is fair to state that the Institute, with the exception of perhaps 300 odd desks, a number of pencils, and I am sure the member for Sarnia would agree, a great deal of intellectual capacity as assets, had none, so that it was necessary for Government Services because of the nature of the institute to become involved after the selection of the firm to do it was made.

Mr. Bullbrook: I want to ask the Premier a question. Mr. Premier do I understand you correctly that one of the considerations that would have motivated you had the occasion arisen to not refer this matter to Government Services was your friendship with Mr. Moog?

Hon. Mr. Davis: I would say that Mr. Bullbrook this would be one reason that if in fact I had discussed this with the Chairman of Hydro there would be the first reason and the prime reason that there is no need, and I think and I am trying to be as helpful as I can, that because of the relationship with Mr. Moog I think it is conceivable that my own mental process would be such as not to have a ministry of government ~~be~~ if possible, involved in the determination.

Mr. Bullbrook: Well Mr. Premier, it goes without saying that I accept your evidence. How do you distinguish your position then in connection with this secondary ~~times~~ impulse, with your position when you were Minister of Education and referred it then to Government Services when it was dealing with the same friend?

Hon. Mr. Davis: Well because Mr. Bullbrook, the decision as to who the contractor was to be was made by the Institute Board of Governors, under the chairmanship of Mr. Laskin and some other very reputable people. The decision as to who the contractor was to be was made ~~and~~ prior to referral to Government Services to determine how title was to be ~~be~~ taken etc. to get around the problem of the institute negotiating any assets, as far as the financing is concerned. There is a distinction. There was also as I am sure you are aware, some discussion of the "academic autonomy of the institute" ~~and the fact that the Institute was not to be~~
Tape H 1313 follows

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(Hon. Mr. Davis)

but the decision as to who it was to be, was made prior to."

Now, I can't tell you what my reaction would have been if Hydro had said we have determined that Canada Square is the contractor; Would you ask Government Services to help us ~~final~~ ^{finalize} the arrangements ^{there} I think you could draw a parallel but, at that particular point in time, there had been no decision by Hydro and I think there is a very real distinction.

Mr. Shibley: To put it in simple terms, Mr. Premier, I take it that because Hydro was well able to attend to its own contract you were happy ~~enough~~ to have to involve the Ministry of Government Services?

Hon. Mr. Davis: Quite.

Mr. Shibley: Just returning to the notation for the moment, I've realized what your evidence has been.

Hon. Mr. Davis: Mr. Shibley, the notation is in error. It's just as simple as that. It proves, I guess, that in any office, including the Premier's office, there ~~are~~ can be errors made in notations and I am in no way reflecting on the competence of anyone in the office, but I just have to tell you there was not a discussion between myself and Mr. Gathercole and I did not direct it to go to Government Services ^{and} ~~in~~ the notation on the letter has to be an error.

Mr. Shibley: Then, in what manner, if any, did you respond to this letter of May 16 from Mr. Gathercole?

Hon. Mr. Davis: I did not respond to it at all.

Mr. Shibley: You'll notice the second portion of the notation. "Premier spoke to Gathercole" I gather is the initial, "Policy submission sent to cabinet", and the evidence has been that that related to the Nanticoke to Pickering line. Have you any recollection of discussing that aspect of this letter with Mr. Gathercole?

Hon. Mr. Davis: There was a discussion at some point, Mr.

July 23/73
1.00 to 1.05 pm
fvk

(Hon. Mr. Davis)

Shibley, with the ~~the~~ chairman of Hydro related to that transmission line and there was a subsequent submission to cabinet.

Mr. Shibley: I'm sorry, sir, my mind was distracted. Did you say that you had discuss~~ed~~ it with Mr. Gathercole?

Hon. Mr. Davis: I can't tell you when but there was a discussion and ther~~e~~ was a submission to cabinet on the Nanticoke to Pickering line. I'd have to check my own memory on this. I'm not sure that out of that emerged the Solandt Commission or whether it was before but it was related to the~~xxxx~~ transmission line and there was a submission and ~~and~~ discussion at cabinet related to that.

Mr. Shibley: So that although there was no written response to this letter, might there have been an oral response to it in the same way as you dealt with the second ~~second~~ subject matter of the letter?

Hon. Mr. Davis: No, there was no oral response. As I say, Mr. Shibley, there will be some who might say there should have been but to ^{be} very factual, to the best of my recollection, I did not communicate orally, or in writing, to the chairman of Hydro that he should submit this proposal, or the evaluation, or what have you, to Government Services.

Mr. Shibley: Mr. Premier, you had a meeting with Mr. Gathercole on June 1, 1972. Did that meeting have anything to do with the subject matter of the May 16 letter?

Hon. Mr. Davis: My best recollection is that this dealt with Task Force Hydro and, as I explained to you, Mr. Shibley, I'm reluctant to get into a discussion of issues that were raised, apart from the head office building, but ^{so} you are concerned about this note on the ~~later~~ letter and I can understand why. I'm really confident that it was because there were meetings the same afternoon with other, not with other members, because Mr. Gathercole was not a member of Task Force Hydro, but I did have meetings that afternoon of June 1 with members of Task Force Hydro and I'm really quite confident that was the basis of our

(Hon. Mr. Davis)

discussion that morning.

Mr. Shibley: I'm not going to go on with it now. ~~but~~
It's the noon recess. But I just want to know when was the next
communication with Hydro referable to the head office building?

~~From head office~~

(Tape H-1314 follows)

July 23/73
1:05 - 1:08 pm.
M.S.

(Mr. Shibley)

~~head office meeting~~

Hon. Mr. Davis: Well, the next communication that I can recall from head office about the head office from Hydro would have been - and I think I'm right in this - the letter containing the press release in July.

Mr. Shibley: Thank you, sir. Well, we'll deal with that after lunch if you're going to be available.

Hon. Mr. Davis: I shall be available after lunch, Mr. Shibley.

Mr. Chairman: All right. Well, how long a ~~length~~ lunch hour do you want, Mr. Premier? We generally take about an hour and a half.

Mr. G. Hodgson: Mr. Shibley, had the Premier actually seen this letter?

Mr. Shibley: Mr. Hodgson wants to know whether you actually saw this letter of May 16, 1972?

Hon. Mr. Davis: I find this a bit awkward. I certainly have seen it since. If it is the custom of the committee to have an hour and a half, Mr. Chairman, far be it for me -

Mr. Chairman: We don't need an hour and a half. Why I ask you that, I don't know what you are counting on. I know ~~that~~ ~~we are short for time with you. You have a busy schedule naturally and I want to cover as much as possible. But Mr. Shibley is indicating that perhaps he needs until 2:30 anyway. So if that's all right with you we'll adjourn until 2:30.~~ (I know we're short for time with you. You have a busy schedule naturally and I want to cover as much as possible. But Mr. Shibley is indicating that perhaps he needs until 2:30 anyway. So if that's all right with you we'll adjourn until 2:30.

Mr. Shibley: I think we may save time if we take the extra half hour. I'd like to look at my brief.

The committee adjourned ~~2:30 pm~~ 2:40 pm

APPEARANCES

Committee members:

J.N. Allan
J.E. Bullbrook
I. Deans
M. Gaunt
L.C. Henderson
R.G. Hodgson
W. Hodgson
J.P. MacBeth (Chairman)
W. Newman
J.A. Renwick
G.W. Walker

Clerk of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Ontario Hydro counsel:

Pierre Genest, QC
James McCallum, QC

Canada Square counsel:

Douglas Laidlaw, QC
Blair Cowper-Smith

Counsel representing Mr. Moog:

G.D. Finlayson

Premier and President
of the Executive Council
of Ontario:

Hon. W.G. Davis

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Monday, July 23, 1973

Afternoon session

HYDRO HEADQUARTERS

The committee reconvened at 2.40 p.m. in the Members' Board Room.

Mr. Chairman: I call the meeting to order.

Mr. Shibley: Mr. Chairman, I would just like to report that I ~~say~~

Hon. Mr. Davis: ~~There is somebody here from the~~ the communications media ~~are~~ still with

~~Canada in hand~~ ~~not~~ that I really care but I just didn't want you to become upset if you found out about it, in that he was doing it where I could see it and you couldn't.

Mr. Chairman: I would become very upset, Mr. Premier.

Hon. Mr. Davis: I wonder, Mr. Chairman, it is not an appropriate place perhaps, but it is just for the consideration of the committee and I have ~~not~~ had no chance to talk to you or to counsel but in case we don't afterwards; I know the hearings have been prolonged and, certainly subject to committee and counsel, whatever you determine, I would just like to make this personal observation that perhaps there would be some merit, if the committee were thinking about it, with respect to tomorrow afternoon. I just wonder whether the committee should be sitting during the funeral of the Provincial Auditor tomorrow ~~and~~ I would just say ~~for my~~ ~~own~~ standpoint, hopefully perhaps Mr. Shibley, you will be finished with me, if I could use that term, this afternoon.

Mr. Shibley: Or you with me sir.

Hon. Mr. Davis: ~~say~~ but I do feel that there is certain respect due to the Provincial Auditor of this government ~~and~~ perhaps committee might like to give that some consideration for tomorrow afternoon.

Mr. Chairman: All right, I will ask them to consider it now and ~~they~~ ~~we~~ can decide later on. I know I have already spoken to Mr. ~~Shibley~~ ~~Shibley~~ he and I and others here have been acquainted with him on the Public Accounts Committee this year. Mr. Allan and I were planning to

July 23, 1973
2.40-2.45 pm
V.H.

(Mr. Chairman)

visit there tonight depending what time we get through. But at the same time I was not planning to recess the committee but the committee may wish to do otherwise with this in mind.

Hon. Mr. Davis: Well, I have no suggestion. I just, I guess, express a personal point of view. This is a very unhappy situation and he has been a very ~~good~~ ^{great} public servant for this province.

Mr. Chairman: Well, certainly when duty calls you there, we all understand that.

Mr. Bullbrook: Do you want to dispose of it now?

Mr. Chairman: We can if you wish, unless you want to think about it. Anyone want to ^{comment} ~~A.~~?

Mr. Bullbrook: I would comment that we would concur in the wishes of the Premier which really convey the thoughts of all of us. If you want a formal motion?

Mr. Chairman: I think not, if that's ~~the~~ the ~~express~~ wish.

Mr. Deans: ~~We will sit in the afternoon.~~

Am I to understand that we are not going to sit in the afternoon? We will sit in the morning.

Mr. Chairman: We will sit in ~~the morning~~ but not in the afternoon.

Mr. Allan: What time is the funeral? We will sit until probably one?

Mr. Chairman: I'm not sure what time.

Hon. Mr. Davis: I think the funeral is either two or two-thirty and it's in Port Credit, Mr. Chairman. I think it may perhaps ^{be} in ERindale. I am not sure but it's out that way somewhere.

Mr. Chairman: We will arrange at any rate to adjourn sufficiently early to allow people to get there, whether it's one o'clock or twelve-thirty or twelve. *That's agreed upon.*

I am looking for Mr. Finalyson; I don't see him.

Mr. Cowper-Smith: I expect him momentarily.

Mr. Chairman: All right. Is there any problem with producing those documents this afternoon, do you know?

July 23, 1973
2.40-2.45 pm
V.H.

Mr. Cowper-Smith: I really don't know. I haven't

~~been in touch over the lunch hour with him. I expect to see him.~~ ^{spent} ^{would suspect he will be}
~~here very shortly now.~~

Mr. Chairman: Any further remarks to make, Mr.

Premier?

Hon. Mr. Davis: No, that was it and as I say, it
^{observation}
was an ~~affirmation~~ on my part.

Mr. Chairman: Mr. Newman?

Mr. W. Newman: Mr. Chairman, ^{do we need a}
~~motion to the chair?~~

Mr. Chairman: No. No.

Mr. Shibley: Mr. Premier, I am going to outline
a series of circumstances as established by the evidence.
It will be somewhat lengthy because it has to do with a
number of communications and some transcripts. I tell you
in advance that ~~when~~ ^{when} I am through, I will ~~also~~ ^{be} seeking
from you ^(S) a record of what information, if any, and what know-
ledge, if any, you have referable to the matters that I am
about to review with you. I think it is important that if
you have any such information and if there was any communi-
cation ~~with~~ ^{to} you in connection with the matters I am about
to outline, that it be established as a matter of record
before this committee and, if not, it may simply be a state-
ment to that effect.

Hon. Mr. Davis: Mr. Shibley, ~~this~~ according to my
recollections over the lunch hour we had reached sort of
the July-August ~~period~~ ^{period}

~~Mr. Shibley: That's correct. That's correct.~~

~~Now I~~

Tape H-1316 follows

July 23/73

2:45 - 2:50 pm

C.B.

(Hon. Mr. Davis)

~~Mr. Shibley according to my recollections over lunch hour
we'd reached sort of the July-August...~~

Mr. Shibley: That is correct. Now I would like produced to you first and have the committee refer to the fact that there were two press releases one being in draft form or a first form of release dated July 21, exhibit 41, which was sent to Mr. Fleck under cover of a letter of the same date and reporting upon Hydro's intention to enter into arrangements with Canada Square. The mere fact of that is all that I want to draw to your attention.

The second circumstance is that the actual press release was not published until August 25, 1972, as exhibited in exhibit 88. So that there was a period of delay or a period elapsed between July 21, 1972 and August 25, 1972 in respect of the publication of the press release.

I want produced to you now a letter dated July 14, from Mr. Smith to Mr Cronyn, being exhibit 175. Have you had the opportunity to review that document sir?

Hon. Mr. Davis: No I haven't.

Mr. Shibley: Well would you look at it please. This is a letter wherein Mr. Smith says that he talked to ERnie Jackson about the Hydro job, he arranged a meeting with George Gathercole, a courtesy meeting, did mention that they'd like to deal with somebody who had previous experience with the government, obviously Moog, also had experience in management. Mentioned "that we could manage it ourselves" and so on.

"I understand that Jerry Moog started last February on drawing and that he is now working on detailed drawings, although no decision has been made by Hydro."

And he says what he thought was good about his proposal. " I felt that the proposal call was not

July 23/73

2:45 - 2:50 pm

C.B.

(Mr. Shibley)

all that complete and I thought they would probably narrow their decision down to two or three people, and then get them to ~~and~~ submit complete plans and specifications which could be judged on an equal ~~and~~ basis."

"I talked to Joe Banicke last week and he suggested that I might jeopardize any future dealings with the government if I stirred anything up on this job and I might be wise to take Joe's advice and I would appreciate your comments, but I don't want to put you in any position of embarrassment at all. "

So that on July the 4th ~~since~~ there was so to speak a ~~big~~ letter registering Mr. Smith's point of view with Mr. Cronyn as evidenced by that document.

Then sometime prior to August 21st, Mr. Smith apparently had a conversation with Mr. Dillon. I want to read you the evidence in that respect in Hansard on page 546-1.

"Mr. Shibley: What was the reason?

"Mr. Seguin: I was called by a member of the Task Force, asking me if I would meet or talk to a Mr. Smith of Ellis-Don, and I said no.

"Mr. Shibley: I see.

"Mr. Seguin: I said if he wants to talk to the Commission or to a commissioner for the Commission, he should meet with the Commission or write the secretary.

"Mr. Shibley: I see.

"Mr. Seguin: And his answer, well, he will write to you personally. I can't stop that"

And the exchange apparently with Mr. Dillon preceded a communication from Mr. Smith to Mr. Seguin, dated August 21, 1972.

H 1316 - 3

July 23/73

2:45 - 2:50 pm

C.B.

(Mr. Shibley)

So that, and Mr. Smith said in fact, I wrote to my friend
when
Mr. Cronyn on July 14, ~~and~~ I didn't get any action I wrote
to Mr. Seguin." Apparently in the interval he spoke to Mr.
Dillon who was the one ~~that~~ that suggested that SEguin be the
person among the commissioners with whom he ~~was~~ should be in
written communication.

So now at that point of time Mr. Premier, we have
Mr. Cronyn and Mr. Dillon aware of Ellis-Don complaining about
the manner in which they were being dealt with and we also

~~xxxxxxxxxxxxxxxx~~

H 13167 to follow

July 23, 1973
2.50-2.55 p.m.
M.F.

H - 1317 - 1

(Mr. Shibley)

~~aware of Ellis Don complaining about the manner in which they were being dealt with, and we also~~ have Mr. Seguin aware of that, all in the period I have mentioned.

Mr. Gathercole also gave testimony very early in his evidence at transcript tape 46 - 3, and about a quarter of the way down the page he said:

"Well, Mr. Chairman and members, I wish to correct a statement I made yesterday to the effect that I thought Mr. Roger SSeguin, a member of the Commission, at a meeting of the Commission in July of '72, may have raised the question of Mr. Moog's friendship with Mr. Davis as being a possible source of embarrassment. Since giving my evidence, I have spoken to Mr. Seguin, who has advised me that no such statement was ever made by him, and that, in fact, he did not know of any friendship ~~between~~ ^{between} Mr. Moog and Mr. Davis until he read the press statements to that effect in April of this year.

"The Commission minutes show that Mr. Seguin was not present at the meeting to which I referred yesterday. I have also spoken to a number of ^{our} other commissioners and our general manager, who sits in at all the Commission meetings, and none of them recall any such statement being made at any Commission meeting by anyone."

But you will notice that his reference had been to a Commission meeting of July, 1972, wherein the question was raised and he said Seguin contradicted him in terms of he being the person who ever raised any such question.

I also alert you to the circumstance that attached to the August 25th press release which I received, but which I gather was not sent to your office, was what is exhibit 177, being a document also dated August 25th, 1972, and styled - "Suggested answers to questions that may develop~~ed~~ following the distribution of news release on head office building," and

H - 1317 - 2

(Mr. Shibley)

one of the questions on the bottom of the first page is
"Why was Canada Square Corporation selected?"

Mr. Premier, finally I would like to refer you to exhibit 85, which is a memorandum of Mr. Candy dated July 19th, 1972, and in the third paragraph of that memorandum Mr. Candy saidx - and he is referring to the Commission meeting of July 19th at which the decision was taken to enter into a contract with Canada Square?x

"I advise the Commission that Canada Square will obtain their interim financing up to an amount of \$40 million from the Bank of Montreal, and that Canada Square now advises" - and I ask you to note the words "now advises" - "that they anticipate all of their long term financing will be obtained from Switzerland"

It is clear also from the evidence, and I won't bother you with the details, that the ultimate financing for this building is no longer Swiss. But as at July 19th, Mr. Candy was reporting to the Commission that the whole of the financing was Swiss, and as at that date Mr. Smith had already written to Mr. Cronyn and sometime in the period of time around then, Mr. Smith had apparently spoken to Mr. Dillon, and Dillon had given him Mr. Seguin's name with which to write his August 21st letter, and I remind you again that the press release which ultimately issued was not issued until August 25th, 1972.

I want to know from you, Sir, whether you have any information, any knowledge, of any nature or kind whatsoever, respecting the events which affected ~~the~~ what appears to be a change in the financing as reported by Mr. Candy's memo of July 19th to what was ultimately arranged?

Hon. Mr. Davis: No, Mr. Shibley, I have no information related to any of these memoranda or any of these issues with the exception of one and that is the initial press release.

July 23, 1973
2:55 - 3:00 pm
JLP

Mr. Davis (cont) ~~memorandums or any of these issues with the~~
~~exception of one and that is the initial press~~
~~release.~~ Any of the internal memos, any discussions of this kind
or information, which may or may not be the case, I am not aware
of it at all. There were no communications with me or with the
office on any of these matters whatsoever except the initial
press release.

Mr. Shibley: Did you receive any communication
from - let's start with Mr. Cronyn - as to the complaints of Ellis-
Don?

Hon. Mr. Davis: I received no communications
from Mr. Cronyn with respect to Ellis-Don, really, I believe at
any time. Certainly, and I assume we will get to the November
period a little later, but I really don't think I talked to Mr.
Cronyn about Hydro, at least the head office of Hydro, during July
and August whatsoever.

Mr. Shibley: All right. And can we while we are
at it, encompass the months of September and October also.

Hon. Mr. Davis: September and October also.

Mr. Shibley: All right.

Mr. Chairman: Mr. Renwick.

Mr. Renwick: Mr. Cronyn, Mr. Premier, was very
indefinite at the early part of his evidence as to whether or not
he had discussed with you in the summer of 1972 the matter of the
head office. Later on he came to the conclusion that he was thinking
about a period later on in the year in November. Specifically, do
you recall any meeting with Mr. Cronyn in the summer of 1972 that
would have related to or could have related to the head office of
Hydro having regard to the fact that Mr. Cronyn received this letter
which is Exhibit 175, I believe it is, from Mr. Smith.

Hon. Mr. Davis: The only factual note that I can
give, Mr. Chairman, through you to Mr. Renwick, would be a meeting
with Mr. Cronyn in March of 1972, then in September 26 of 1972. Now
this doesn't mean there could not have been an occasion when Mr.
Cronyn and I may have chatted. I wouldn't say that this could not

(Hon. Mr. Davis)

have occurred but certainly to the best of my recollection Mr. Cronyn never mentioned Ontario Hydro's head office at all during July, August, September, October.

Mr. Renwick: Thank you Mr. Chairman.

Mr. Shibley: Now then, the next person I would like to take up with you is Mr. Dillon with whom there appears to have been communication during a material period of time.

Hon. Mr. Davis: I think I am right in this, Mr. Shibley, that I don't think Mr. Dillon has ever talked to me about Ontario Hydro head office. And ~~xxxx~~ certainly not during that period of time.

Mr. Shibley: Have you any information to the effect that either Mr. Cronyn or Mr. Dillon spoke to Mr. Fleck within that period of time?

Hon. Mr. Davis: Any information I have, Mr. Shibley, would indicate very clearly that they did not. Certainly, never mentioned to me by Mr. Fleck.

Mr. Shibley: All right. And similarly with respect to Mr. Fleck, did he have any communication with you during the four months we are talking about just to cover September - October, ~~xxx~~

Hon. Mr. Davis: No.

Mr. Shibley: but I am really directing your mind to ~~xxx~~ what happened in July and August.

Hon. Mr. Davis: Basically, in July and August, no he did not. Nor was there any communication from Ellis-Don to me.

Mr. Shibley: Have you any knowledge or information as to whether the matter of the Ellis-Don complaint as recorded with Mr. Cronyn by his letter of July 14, and as recorded by Mr. Smith with Mr. Seguin and Mr. Dillon, had anything to do with the delay in sending out the press report that I am talking about, the delay between July 21 and August 25.

July 23, 1973
2:55 - 3:00 pm
JLP

Hon. Mr. Davis: Certainly not to my knowledge,

Mr. Shibley.

Mr. Shibley: You have no information.

Hon. Mr. Davis: None.

Mr. Shibley: Now, I have already alerted you to

the circumstances of the apparent change of financing if Candy's memorandum and his advice to the Commission at the meeting at which they literally approved of the contract with Canada Square, or approved of entering into a contract with them. His memorandum indicates that on July 19 the financing was to be all Swiss. Our present information is that it's no longer to be Swiss financing.

Mr. Finlayson: And never was.

Mr. Chairman: Mr. Finlayson, we will have an opportunity to hear from Mr. Moog at a subsequent date.

Mr. Finlayson: My friend has seen the correspondence; he knows there is no commitment in it, and he shouldn't misstate the facts to the witness.

~~_____~~

~~_____~~

(Tape H-4319 follows)

H-1319-1

(Mr. Finlayson)

~~my friend is speaking for his clients. He knows there is no commitment in it, and he shouldn't mistake the facts to the witness.~~

Mr. Shibley: Mr. Chairman, I have taken about four such observations from my friend ^{and} ~~and~~ desisted from responding in kind. I am quite prepared to have my answers emanate from the answers of witnesses who are called to testify under oath, and I don't appreciate the gratuitous comments of counsel. I am relying upon the testimony as recorded to this point of time ^{and} ~~in~~ the documented evidence as recorded to this time. I have been careful to refer to the fact that Mr. Candy had reported to the commission at a key meeting on July 19 "Canada Square now advises that they anticipate all of their longterm financing will be obtained from Switzerland," and either my ~~friend's~~ friend's statement amounts to a statement ~~that~~ Canada Square misstated the fact to Mr. Candy, or Mr. Candy was mis-stating a fact to the commission.

Hon. Mr. Davis: To answer your question to ~~me~~ me, Mr. Shibley, I did not have any information related to the financing of the project at all. There was only one communication that I can recall or know of in July/August, and I think this applies to September and October, but I made a particular effort in July and August to see if there was anything to search out my own memory, and the only think that I can recall is the original press release. I don't think I saw the final press release until it was in the paper itself.

Mr. Shibley: When that press release was sent to Mr. Fleck it was sent under cover of a letter as you ^{had} before ^{at} exhibit 41 wherein comment was made to the effect. I'd better read it to you verbatim.

Hon. Mr. Davis: Yes, I can read it.

"We wish to ensure that this action is not in conflict with the Premier's ~~own~~ judgment."

Mr. Shibley: Yes, that is correct sir.

Hon. Mr. Davis: And I know what you are going to ask, Mr. Shibley, and I assure you as I read it, and I think it was after probably that Mr. Fleck dealt with it, any judgement that I could interpret there would be just as to the timing of the release itself

H-1319-2

(Mr. Davis)

I think it is fair to state that Mr. Fleck either dealt with it on his own initiative because I think I was away. I normally like to take the last two weeks in July as vacation, and, whenever, as I am sure others here do, whether Mr. Fleck and I chatted about it before his reply went out and confirmed it, or whether he mentioned it before, I honestly can't tell you, Mr. ~~Shibley~~ Shibley. I can only say that Mr. Fleck's reply to Mr. Gathercole, and whether I saw it the hour before it went out, or a day, or ten days later, I can't honestly tell you that. It though met with my approval.

Mr. Shibley: Well now, Mr. Fleck answered by a letter which is ~~number~~ exhibit 44, dated August 8, 1972:

"Thank you for your note. The Premier will be interested in seeing it. In passing, I might add that while we wants to be kept informed, the judgment is supplied by the Commission."

I should tell you, sir, that Mr. Gathercole said that their records do not indicate receipt of that letter, and Mr. Fleck on the other hand has said he sent that letter. Have you any knowledge or information as to the circumstances of the sending of that letter?

Hon. Mr. Davis: No, I haven't, Mr. Shibley, other than to say that Mr. Fleck and I did discuss it, and that what was said in the letter ~~it~~ certainly ~~was~~ met with my approval.

Mr. Shibley: In any event, I should also tell you, ~~that~~ sir, that there is a draft endorsed in handwritten form on a copy which is exhibit 176, and I am wondering, without knowing before I ask you, whether you can assist us in explaining ~~that~~.

H-1320-1 follow-

July 23, 1973
3.05 - 3.10 p.m.
M.R.

(Mr. Shibley)

~~... and you~~
~~... why this copy of~~
the document starts with a small (a) and Exhibit 4 documents starts with - I'm sorry, I'm talking about the remittance - Exhibit 41, as compared with Exhibit 176?

Mr. Chairman: I think part of 176 if you turn over to about the third page you will get ~~a~~ that letter you are looking for, won't you? It starts, "Dear Jim."

Mr. Shibley: Yes. The first page it is, sir, "Dear Jim, attached is a copy..." and you will notice the word "attached" has a capital A in Exhibit 41, whereas in Exhibit 176 it's "Dear Jim, attached ...", and the attached starts with a small (a). Is there any explanation for that?

Hon. Mr. Davis: Mr. Shibley, I have none.

Mr. Shibley: Okay, you have no information?

Hon. Mr. Davis: No, I have none whatsoever.

Mr. Shibley: All right. I hoped you might be able to clear up this small thing for me but it's just another item.

Hon. Mr. Davis: That's one detail I can't help you with.

Mr. Shibley: Well, then, I'd like to move on with you, sir, to November and before we launch into the month itself, had you, on or before November - I'm sorry, had you prior to November of 1972, received any word or any information of any kind whatsoever, from any source, as to the Ellis-Don complaints?

Hon. Mr. Davis: Prior to November, 1972, Mr. Shibley? I really don't believe I had any communication at all from anyone with respect to a complaint.

Mr. Shibley: I see. Well, or that they were disappointed?

Hon. Mr. Davis: Even that they were disappointed, although I think it was a natural thing to assume, but they didn't, shall we say, express their disappointment to me.

July 23, 1973
3.05 - 3.10 p.m.
M.R.

Mr. Shibley: Were you, in any way, informed that there might be questions raised or difficulties arise, of any kind, referable to the head office building prior to November?

Hon. Mr. Davis: There was no communication to me, Mr. Shibley, prior to that time, that there would be. I can't tell you really whether I thought there would be personally or not but certainly there was no communication to me that the matter might be raised.

Mr. Shibley: Are you now aware as to whether anyone within your office was alert to the circumstance that a problem might arise?

Hon. Mr. Davis: Prior to the end of November?

Mr. Shibley: Prior to the end of October.

Hon. Mr. Davis: Or October? No, I'm not.

Mr. Shibley: Well, now then, I want to go to November of 1972 with you, and ask you first whether you had any communication yourself as to problems arising out of the manner in which Hydro had let this job?

Hon. Mr. Davis: No, I don't believe, Mr. Shibley, there were any direct communications to me that I can recall from anyone with respect to the manner in which Hydro finalized this contract, ~~concluded~~.

Mr. Shibley: I'd like to start at the beginning of that month and trace your own itinerary, if I may. I understand that you were here on the 1st of November until late - at least, around five o'clock that afternoon and then left for a week's trip, not to return until November 8. Is that correct?

Hon. Mr. Davis: That is correct.

Mr. Shibley: While you were absent from the city were you in telephone communication with Mr. Fleck or anyone within your office?

Hon. Mr. Davis: As little as possible, but to say that I didn't have one or two calls would be wrong. I'm sure I did, but none of the calls, Mr. Shibley, related to Hydro.

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AA

~~(Mr. Shibley)~~

Mr. Shibley: In particular, Mr. Premier, on November 7th, Mr. Fleck made a record in his ~~or~~ made a note in his ~~Day-Timer~~ "E. D. Cronyn, Hydro" and explained that at that point in time, he was combining information previously received ~~from~~ from Mr. Cronyn and the fact of a rumour of a press investigation of a contract. ~~He~~ He also said that on that day — I am sorry, he didn't say it but I believe it is now in evidence — that on that day ~~it is his evidence~~ that on that day he set up an appointment for Mr. Gathercole to meet with you on the 9th ~~and~~ to put it into context, he says that the meeting had to do with Task Force Hydro; that on the same day, November 9th, another member of the task force was arranged to attend upon you. ~~He~~ He also has in his ~~Day-Timer~~ a note on November 9th, "G. G. letter" by which he explains that it was a reminder to ask George Gathercole for a ~~letter~~ letter and narrative which ultimately took the form of a memorandum dated November 15th, the original of which went ~~to~~ to you under cover of a letter of November 16th and with a copy to him.

Again, to put it all in perspective, you had meetings with Mr. Gathercole on November 9th and November 14th. Now, I would like to ask you first whether, while you were away on your trip, and particularly on or about November 7th, but at any time, did Mr. Fleck communicate to you the matter of the combined effect of Cronyn's advice to him that Ellis-Don were complaining and the rumour of a press investigation?

Hon. Mr. Davis: There was no communication to me, Mr. Shibley, about Hydro while I was in California.

Mr. Shibley: Was there any communication to you about Hydro within that first eight days of November?

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Hon. Mr. Davis: Within the first eight days

Hon. Mr. Davis: No, about - no, I don't think that I ~~was~~ - I don't think that Mr. Fleck went over, while I was away, with me; at least that he went over with me while I was away what my appointments were when I was to return, ~~and~~ I can very specifically say that there was no reference to the head office, and I don't think that we discussed what my appointments were to be when I returned.

~~Mr.~~ Hon. Mr. Davis: ^{(There is no, in} ~~my~~ my view, Mr. Shibley,

relationship between the meeting on the 9th and the matters

that are being considered by this committee.

Hon. Mr. Davis: There ~~is~~^{was} no, as I say, communication between Mr. Fleck and myself related to the concern of Ellis-Don ~~with a view~~. The actual day, as perhaps you know, was ~~not~~^{set} aside some two - three weeks in advance. The whole day was set aside for discussions of Task Force Hydro because it was our intent to make the announcement shortly after my return and the announcement was, in fact, made on the 13th. There is nothing unusual whatsoever in my

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(Hon. Mr. Davis)

meeting the Chairman of Hydro ^{in that} ~~and~~ the task force reports had obvious relevance to him and to the commission and the meeting on the 9th was related entirely to that. As I say, I am reluctant to go into other appointments on my diary, but there is an appointment with Mr. Frame, I think the next half ~~an~~ hour after Mr. Gathercole, who was on the task force who had something of a dissent in the task force report. (v)

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M.R.

(Mr. Davis)

~~my diary but there is an appointment with a Mr. Frame~~
~~I think the next half hour after Mr. Gathercole, who was on~~
~~the Task Force, who had something of a dissent in the Task~~
~~Force Report and I remember the discussions with Mr. Gathercole~~
well.

Mr. Shibley: Just to clear this up completely now, sir, I take it that the matter of the meeting on the 9th was something that was arranged for some time in advance. You have a sheet on which such meetings are programmed well in advance?

Hon. Mr. Davis: Such meetings or shall we say, allocations of time? I think in this case, Mr. Shibley, the whole day was allocated some two or three weeks in advance for a discussion of Task Force Hydro and the people that we should see.

Mr. Shibley: Yes.

Mon. Mr. Davis: Obviously, Mr. Gathercole - in this instance, I had given Mr. Frame an undertaking to see him ~~because~~ because of his dissent on the Task Force Report, the OEMA and so on. So that the day was set aside prior to my trip to California and I think it is quite logical that one of the first persons I would see would be the chairman of the commission most directly affected.

Mr. Shibley: All right. And this was a period of time, I understand, when the affairs of Task Force Hydro were peaking, so to speak. Is that correct?

Hon. Mr. Davis: Well, I would say that. Yes, they were peaking or they had in fact, peaked.

Mr. Shibley: Yes.

Hon. Mr. Davis: But not publicly peaked.

Mr. Shibley: Right.

Hon. Mr. Davis: There is a distinction.

Mr. Shibley: Spelling ^{of} ~~to~~ that word.

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Hon. Mr. Davis: Those of us who are in this profession, there is a - spell it, "pe".

Mr. Shibley: Right. Now, Mr. Premier, is it significant that you had a second meeting on November 14? This would be within the first week of your return, with Mr. Gathercole?

Hon. Mr. Davis: Yes, it would be quite significant, Mr. Shibley. I could become a little partisan here and say it's quite consistent with a number of activities and positive pronouncements of the government, which I'm sure all the members of the select committee would ^{concur} ~~agree~~ in. That meeting on November 14 was a relatively brief meeting to confirm to the chairman of Hydro, I think it was some 15 minutes, that as part of our transportation proposal, which was made at the Science Centre, I think, on November 22 that part of the proposal that we made on that occasion would relate to the use of Hydro right-of-ways and I thought it only proper to inform the chairman of Hydro that we were planning this.

And this was the sole purpose of that gathering and that was all that was discussed.

Mr. Shibley: Now, Mr. Premier...

Hon. Mr. Davis: And I have to say this for the chairman of Hydro, he accepted the proposition that we might use the right of ways with enthusiasm.

Mr. Shibley: Right.

Mr. Bullbrook: You mean, you were expecting something else?

Hon. Mr. Davis: Mr. Bullbrook, I would have been disappointed if I had had any other reaction.

Mr. Shibley: Mr. Premier, I'm having produced to you Exhibit 114, which is a letter of November 16, 1972, enclosing a memorandum of November 15, the latter being Exhibit 112. Now, to this point of time, the information we have been afforded is that Mr. Fleck requested a narrative

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(Mr. Shibley)

of Mr. Gathercole and this appears to be the response. Have you any explanation as to why the original document....

Mr. Genest: Excuse me, Mr. Shibley, I think that's a very one-sided view of the evidence that has gone on to date. Mr. Fleck has some recollection of requesting the memorandum. Mr. Gathercole has none and the evidence, it seems to me, that the weight of the evidence is that that document was produced not as a result of any request by Mr. Fleck.

I think the matter should be put fairly to the witness.

Mr. Chairman: Thank you, Mr. Genest.

Mr. Shibley: I'm getting into trouble all over the place today.

Mr. Chairman: Well, you've got a strenuous day here.

Mr. Shibley: Yes, I will acknowledge that.

Hon. Mr. Davis: Why should yours be any different?

Mr. Shibley: All right. There is a conflict of testimony, Mr. Premier.

Hon. Mr. Davis: You are not going to ask me to resolve it, I hope?

Mr. Shibley: No. But what I do want to know is this: Can you contribute anything to our information as to why the original of this document went to you?

~~Hon. Mr. Davis: No, I can't contribute anything other than I don't think it would be typical for it to come to me.~~

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Hon. Mr. Davis: No, I can't contribute anything, other than I don't think it would be illogical for it to come to me, or be addressed to me. I don't see any - and I hope I am not appearing to come down on one side or the other, Mr. Shibley - just I don't think there would be anything illogical in having the original directed to me.

Mr. Shibley: Were you aware that Mr. Fleck was seeking a narrative from Mr. Gathercole?

Hon. Mr. Davis: I was aware at some point that a narrative was either there or shortly on its way. I can't really comment as to Mr. Gathercole's recollection. I do recall Mr. Fleck observing to me that a narrative was - and I can't honestly tell you - whether received, or in the process, or on its way.

Mr. Shibley: Now in that respect, Mr. Premier, were you by November 15th alert to the circumstance of a rumoured press investigation?

Hon. Mr. Davis: I would think, Mr. Shibley, that I was aware that there was some concern; whether it was a press investigation in that term or whether there was some inquiry, I would think by that date or shortly thereafter certainly I would be aware, yes.

Mr. Shibley: In the context of your information from Mr. Fleck that a narrative was on its way, ~~was~~ was that related to ^{the} ~~a~~ rumour of a press investigation?

Hon. Mr. Davis: I don't like the phrase "rumour of a press investigation". Once again, it is very hard to put these things in perspective. There are many occasions in our office when we anticipate matters that could or could not become problems, and whether it was related, as you phrase it, to a possible press investigation, I can't honestly tell you that, but certainly there was this narrative related to the possibility of questions or questions being asked with respect to Hydro.

But I want to interject here, if I may, Mr. Shibley,

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(Hon. Mr. Davis)

because I know that you are concerned about this particular period of time, and I just want to make one point abundantly clear, that while there was concern at this time, you know you have to sort of live in the office to put it in perspective and have some idea of really the extent to which there was concern. I want to make you aware, Mr. Shibley, and the members of the committee, that the concern was not such that I was pressing any panic buttons, that I was wringing my hands, that I was concerned in any way that would give any indication to a member of my staff that the boss is going up the walls unless something is done.

I want to make it abundantly clear that this was being treated as other circumstances are treated within the office, that there may be some potential questions raised and let's get some answers or some idea of what is happening. But there was nothing to create an environment - and I want to make this very, very clear - there was nothing taking place in my office that would create an environment that would in any way indicate to a member of the staff, or anyone 'close', that they would take any steps that would not be appropriate. I must emphasize that because I say very frankly to you, Mr. Chairman, to the members of this committee, that without in any way questioning the basic questions that you have asked, that I set up this select committee - that is not right; I asked that the House set up this select committee - because in my mind there were two issues. That doesn't mean that there weren't other issues. There were two basic questions.

Firstly, the always difficult one for people in political life of "patronage". Well I knew the answer to that question in my own mind and I hope I covered it very thoroughly, and I hope briefly, in my opening statement. I was particularly concerned - and I say this very frankly to the members of this

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(Hon. Mr. Davis)

committee - the part that led me to recommend to the House the establishment of this select committee was the indication in that particular story of a threat, because I don't like it, I don't do business that way, and I say very frankly, Mr. Shibley, people who are associated with me, or who work with me, or who are, once again, "close" to me, don't operate in that fashion, and if the people wonder why I appear to be a little exercised *correct*

Tape H - 1324 follows

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V.H.

(Hon. Mr. Davis)

~~with me or who worked with me or who are once again in~~
~~quotes "alone to me" don't operate in that fashion and~~
~~if the people wonder why I appear to be a little exercised~~
in the House the day that I introduced this resolution,
it related to, basically, that part of the story ~~and~~ I just
have to make it abundantly clear to this committee that
there was just no environment in the Premier's office
during November, December or at any time since I have been
there, that would in any ^{way} indicate to a member of staff or
to anyone close that they might do something that I don't
think would be proper at all.

Mr. Shibley: Mr. Premier, you mentioned in
part of your statement that there was a concern but it
wasn't of the nature that might spawn a threat?

Hon. Mr. Davis: That is absolutely correct.

Mr. Shibley: And on the other hand, it was of a
nature to have you elicit information so that you might be
informed?

Hon. Mr. Davis: That is correct, Mr. Shibley,
which is not unusual. I would say that we are preparing
for many eventualities, a ~~number~~ number of which never
occur.

Mr. Shibley: Then can you help me, and I will
ask you again! Was the narrative of November 15 such a
narrative as ~~has~~ ^{had} been elicited by your office to prepare
you to make answers?

Hon. Mr. Davis: I would think it would be con-
sistent, Mr. Shibley, to have Mr. Fleck request such a
narrative. I will not, because this is ~~ask~~ after all the
function of the committee, but I would say that it would
be consistent and I ~~could~~ say it would be consistent for
the chairman of Hydro to prepare it. You know, I could
argue it, if I were in your ^{po} ~~posi~~ sition, both ways.

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Mr. Shibley: I have no position to take, Mr. Premier.

Hon. Mr. Davis: I sensed that maybe you were.

I don't say that unkindly.

Mr. Bullbrook: I wonder if you would permit a question to the Premier?

Mr. Chairman: Mr. Bullbrook:

Mr. Bullbrook: I think I am missing something.

Mr. Premier, in view of the fact that I believe your response to our counsel ^{is} that the rumour of a pending press investigation didn't spawn your office's concern, I am not understanding what did spawn it.

Hon. Mr. Davis: What I am saying, Mr. ~~Bull~~ Bullbrook, I don't know ~~that~~ that it was a press investigation ~~or~~ whether it came from the reference that counsel has made to the complaints of Ellis-Don. I just wouldn't want it, shall we say, limited to a rumour of a press investigation. In other words, it might not have been just a press investigation. I mean, you know, I guess we all live in rumours to a certain extent and I just would not like to say that it was just that; ^{another} it could have been rumours emanating from ~~some~~ source. And if you asked me, I wouldn't have the foggiest idea what it would be.

Mr. Shibley: As at November -- let's take the whole month, while we are at it -- as at November, 1972, you had not even as of then, I take from your earlier testimony, knowledge of the discussions of the content of the discussion, which had taken place between Mr. Moog and the bankers in Switzerland?

Hon. Mr. Davis: I said that, Mr. Shibley, this morning.

Mr. Shibley: All right. And you had no information adding to anything you had previously known as of November?


Hon. Mr. Davis: That is correct.

Mr. Shibley: Now, we have had evidence of Mr. Manthorpe to the effect that Mr. Smith called him and his best recollection, although he gave conflicting testimony

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V.H.

(Mr. Shibley)

as to times, ^{Re} seemed to give his best ^{estimate} as being the week of November 27, when he received a phone call from Mr. Smith saying that someone close to your office had called him and told him to be quiet, ~~and~~ that's as far as the observation went with Mr. Manthorpe. Have you any knowledge or information which might assist this committee respecting (a) whether such a call was placed and, (b), if so, who ^{who} that person was ~~that~~ placed it?

Hon. Mr. Davis: I have no knowledge, Mr. Shibley, and I for once will trespass on what ~~it~~ is a judgement of this committee, I don't believe the call was made by anyone on my staff or, in quotes, "close to the Premier" ~~or~~ That would constitute a threat. I shouldn't ~~usurp~~ like 

~~Mr. Shibley: In conversation I might say was not in the nature of.~~

Tape 1325 follow

~~(Hon. Mr. Davis)~~

~~that would constitute a threat. I shouldn't~~

Mr. Shibley: That conversation I might say was not in the nature of—

Hon. Mr. Davis: Oh, I'm sorry, I assumed—

Mr. Shibley: Mr. Manthorpe didn't go so far as what was said later.

Hon. Mr. Davis: I see.

Mr. Shibley: ~~Or what~~ ^{ALL THIS} was said in respect to that conversation, according to his report, was that he was called, Smith said he was called by someone close to the Premier's office and told to be quiet. There was nothing said about "or else".

Hon. Mr. Davis: I see.

Mr. Shibley: Do you have any information whatsoever of any discussion between anyone in your office and anyone on the part of Hydro respecting the circumstances giving rise to the November 15 memorandum prior to the convening of this committee?

Hon. Mr. Davis: I wonder if you would ask that again, Mr. Shibley. Do I have any knowledge of any circumstances,

Mr. Shibley: No, I'll put it to you again. ^{information} Do you have any ~~information~~ that the circumstances surrounding the submitting of the November 15 memorandum to you on November 16 was the subject of discussion between anyone in your office and anyone on the part of Hydro up to the time Mr. ~~Gathercole~~ ^{Gathercole} gave his evidence.

Hon. Mr. Davis: Not to my knowledge, Mr. Shibley.

Mr. Shibley: And you have no information?

Hon. Mr. Davis: None.

Mr. Shibley: Did anyone during the month of November advise you of the specific nature of the complaints raised by Ellis-Don?

Hon. Mr. Davis: No, I don't think there was any discussion in any specific terms, Mr. Shibley. There was only the general observation that Ellis-Don was, and I can't give you the exact terminology, was concerned or upset but not in any detail.

Mr. Shibley: When was the first occasion on which you were given anything in the way of information referable to the Ellis-Don complaints?

Hon. Mr. Davis: It would be some time, the latter part of November would be my best estimate, or early part of December and communicated or, when I say communicated, made known to me, I believe through Mr. Fleck.

Mr. Shibley: And do you know what his source of information had been?

Hon. Mr. Davis: No.

Mr. Shibley: ^{So,} ~~When~~ Mr. Fleck gave you that information, and did you issue any instructions in that respect?

Hon. Mr. Davis: No, because I think at the point in time that I got this information and I've tried to be as helpful as I can, but by the time I had some indication that Ellis-Don was concerned, the narrative as you describe it was already there or enroute. I would think probably already there.

Mr. Shibley: Mr. Premier, did you have any discussion with Mr. Cronyn about the Ellis-Don complaint?

Hon. Mr. Davis: No, I never had a discussion with Mr. Cronyn, not only about the Ellis-Don complaint, but Mr. Cronyn never mentioned to me that Ellis-Don was one of those who was interested in the Hydro project, made no representations whatsoever. The only discussion that I can recall with Mr. Cronyn was some time during that period and it related not to the contract itself or to Ellis-Don, it was part of a broader discussion related to the question of centralization or decentralization which was ^{the} subject of one of Mr. Cronyn's ^{studies} ~~studies~~ and I could be wrong in this because it was not, shall we say, a major conversation; my best recollection is that Mr. Cronyn preferred to the head office of Hydro not in a negative sense but as an illustration of the difficulty of the concept of centralization or decentralization

(Tape 1326x follows)

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3:35 3:40 pm

C.B.

(Hon. Mr. Davis)

~~not in the negative sense but as an observation of the difficulty of the concept of centralization or decentralization~~
as it applies ^{to a} ~~the~~ major corporation or as to a ministry of the government. ~~But~~ But it did not relate, Mr. Shibley, to a discussion of Ellis-Don's complaints or the contrast or procedures at all, it was specifically the matter of location of the head office building.

Mr. Shibley: When was that discussion?

Hon. Mr. Davis: It was sometime, in my best estimate, sometime in November and it would be the latter part of November I would think.

Mr. Shibley: I've already referred you to the communication between Smith and Cronyn in July of 1972 and also the communication between Smith and Dillon which gave rise to this subsequent communication of complaints to Mr. Seguin. Did Mr. Cronyn not at any time in the course of the period, and including the discussion in late November or December, make any reference whatever to the circumstances surrounding the letting of the Hydro contract?

Hon. Mr. Davis: Mr. Shibley, to the best of my recollection Mr. Cronyn in his discussions with me related to the head office building, it was confined to, ^{and} and it wasn't a discussion, it was really basically an observation as to its geographic location.

Mr. Shibley: Have you any information that Mr. Cronyn was alert to the circumstance of a rumoured press investigation when he conferred with you in late November or early December?

Hon. Mr. Davis: I don't believe so.

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C.B.

Mr. Shibley: You have no information?

Hon. Mr. Davis: No.

Mr. Shibley: Whatever he knew and whatever he'd

heard as to a rumour he never raised the matter with you?

Hon. Mr. Davis: No, I think you should understand

the relationship, Mr. Shibley, of Mr. Cronyn, his basic responsibility — and he was very helpful in this regard, was related to the restructuring of government, Task Force Hydro, and it was very rarely that we broadened our discussions, I don't say this to be facetious but I have to be — ^{frankly} ~~here~~ we did broaden our discussions on occasion to the comparisons of the Niagara Peninsula wine or Canadian-made wine with ~~foreign~~ ^{foreign} wine, which is a subject of great interest to him and to my wife. I will not tell just whose side who is on, I would then be in trouble.

Mr. Shibley: I'll tell you whose side my wife is

on.

Hon. Mr. Davis: But you are not running in the Peninsula.

Mr. Shibley: No, you're right. I'd like to remind you, sir, however, that Mr. Cronyn did place a call to Mr. Smith, and initially he said he placed that call on December 12, 13 or 14 and later he said it was probably more nearly after he read the press report of Mr. Nixon's questions in the House, and we also know that the first such press report was December 4. Now Mr. Cronyn made that call and he said the content of his call was ^{that} ~~he~~ he called his friend, a fellow director, and said that he might be interviewed by the press and if so he should be factual and not repeat any hearsay. I'm sure there are sixteen counsel out there who are ready to contradict me if I ^{have} ~~mis~~stated his evidence in any respect.

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C.B.

Mr. Bullbrook: Or conjecture. You had better add that one.

Mr. Shibley: Or conjecture, thank you. Now Mr. Cronyn made such a call to Mr. Smith sometime ~~around December~~, on or after December 4, ~~was~~ and that is his evidence as to timing. Have you any information which you can give to this committee, any information whatever, as to what prompted Mr. Cronyn to make such a call?

Hon. Mr. Davis: None whatsoever, Mr. Shibley. There would be nothing in my discussions with Mr. Cronyn whatsoever that would encourage or discourage such a call. In other words we didn't talk about Ellis-Don and their complaints, so there is just nothing that I can help you or the committee with, with respect to that.

Mr. Shibley: And you have no information of anyone else conferring with him which might have - in a manner which might have led him to make that call?

Hon. Mr. Davis: No, I do not.

Mr. Shibley: ~~Now~~ I have to tell you, sir, that there is an appointment in your diary for Mr. Cronyn on ~~December~~ December 15; I just again want to clean up the record in this respect. Do I take it that at that meeting the head office building was not the subject of any comment passing between yourself and Mr. Cronyn?

Hon. Mr. Davis: I would say that there ^{was} ~~is~~ no discussion with respect to the contract, Ellis-Don, ^{it is possible, Mr. Shibley, that that could have} ~~been~~ ^{been} the occasion, although it could have been earlier too, that there was a reference to the location. But the meeting with Mr. Cronyn on December 15, did not.

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(Hon. Mr. Davis)

reference to the location. ~~But the meeting with Mr. Cronyn on December 15 did not~~ encompass within it discussions of the way or the people involved, at least Ellis-Don or their complaints. I just can't be as helpful as I'd like as to the date of the discussion and geographic location, ~~and~~ I would just have to say it ~~was~~ could have been mentioned on the 15th, but I assure you there was never discussion with John Cronyn. John Cronyn never said to me anything about Ellis-Don, nor did I say anything to him.

Mr. Shibley: Mr. Premier, it appears that Mr. Fleck had some contact with Mr. Candy in December of 1972 referable to the head office building, and particularly directed to answering Mr. Nixon's questions in the House. Are you aware of that?

Hon. Mr. Davis: Yes.

Mr. Shibley: Did Mr. Fleck discuss the matter of the Ellis-Don complaint's with you?

Hon. Mr. Davis: He didn't discuss it, Mr. Shibley, other than to inform me that he had heard that Ellis-Don were ~~upset~~ / I can't use the exact terminology, upset or unhappy as to the awarding of the contract for the head office.

Mr. Shibley: Yes. And he was making his inquiries in this respect with Mr. Candy in early December, is that not correct?

Hon. Mr. Davis: Well, the questions were on the order paper - what, the 4th?

Mr. Shibley: On the 1st, sir.

Hon. Mr. Davis: On the 1st. So that I would think that with respect to answers, in that we always like to get immediate answers for those questions that are raised, could have started very shortly thereafter. I can't tell you the dates that Mr. Fleck ~~has~~ / I am sure you have already covered this with him.

Mr. Shibley: HAVE YOU ANY INFORMATION AS TO ~~what~~ what communications passed between Mr. Fleck and Mr. Cronyn at that time referable to the Ellis-Don complaint?

Hon. Mr. Davis: To Ellis-Don? No. ~~Exchange~~

Mr. Shibley: You have no information?

Hon. Mr. Davis: No, I ~~has~~ not.

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CA

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Mr. Shibley: So you can't assist the committee?

Hon. Mr. Davis: I can't help you there.

Mr. Shibley: You also met with Mr. Gathercole on December 21, 1972. Was it any part of the discussion of that meeting, the subject of the Ellis-Don complaints?

Hon. Mr. Davis: No, it dealt specifically with the implementation of the task force report. It had been released, of course, as you know by that time. It was then a matter of ~~implemment~~ implementation. There was, quite frankly, discussion as to the nature of the board; the functioning of a possible executive committee; and the total discussion on December 21 related to the ongoing approach the government was hoping to take with respect to Task Force Hydro's report.

Mr. Shibley: Mr. Premier, did you ever have, either alone or together with others, any contact ~~was~~ with Mr. Candy subsequent to Mr. Nixon's questions?


Hon. Mr. Davis: I don't believe that I have been alone with Mr. Candy at all. I don't recall being at a meeting with Mr. Candy.

Mr. Shibley: Was Mr. Candy ever at a meeting that you weren't at, of other persons in government?

Hon. Mr. Davis: Just say that again slowly? Was Mr. Candy ever at ~~was~~ what?

Mr. Shibley: A meeting with persons in government. I am thinking in particular of persons who are responsible in government, even though you weren't there?

Hon. Mr. Davis: I can't comment on this, Mr. Shibley. All I know is that I don't think that I was ever present at a meeting, with one exception, when Mr. Candy was present; and I will give you the exception. Nor can I recall being at a meeting with others where Mr. Candy was there. I can't recall it. There ~~was~~ was one exception, where Mr. Candy, I think in February of 1973, made a presentation to Cabinet of the



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AA

(Hon. Mr. Davis)

where Mr. Canday, I think in February of 1973, made a ~~presentation to Council~~ of the model and the general plans for the Hydro building.

MR. Shibley: I was loath to make specific reference to Canada Square because I am not quite sure when I am ~~treading~~ on . . .

Hon. Mr. Davis: Well, I don't think I am betraying any confidences of Cabinet when I say Mr. Candy was there, I think it was February of 1973 to ~~show~~ the model and to explain to Cabinet the layout of the building, the esthetics shall we say, etc. It was not to discuss the contract.

Mr. Shibley: Whatever was his purpose in being there, Mr. Premier, was it any part of the exchange between himself and anyone ~~present~~ present at that meeting to answer for the manner in which Hydro had gone about letting this contract to Canada Square?

Hon. Mr. Davis: No, I think here I am treading on - I think it was at a request of one of the ministers who was interested in the general environment of Queen's Park and that includes the area from University Avenue up. It was not related to the ~~manner~~ manner or to the contract itself. That was not the purpose of the request.

Mr. Shibley: Now then, I gather that subsequent in point of time to December of 1972, matters seemed to quiet down for some period of time and then enquiries began again referable to the manner in which Hydro had let this building, is that correct?

Hon. Mr. Davis: What is the time period you are covering again?

Mr. Shibley: I am now trying to jump really from December of 1972 to the spring of that year. I am wondering

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AA

(Mr. Shibley)

when was the first occasion upon which there was anything of a renewed interest in the matter of how Hydro had let this building.

Mr. Genest: Mr. ~~Mr.~~ Shibley, do you mean 1972, or 1973?

Mr. Shibley: 1973.

Hon. Mr. Davis: Well I think the interest was renewed, to the best of my recollection, Mr. Shibley, when there was a contribution made by the Leader of the Opposition in the House related to some of the mathematics of it. I don't think - well I don't have his speech here - but I think it was related basically to the mathematics of the contract, not necessarily to the way the contract was let. I think that this was the next occasion when the question of the Hydro head office became a matter of issue. And that would be what - four or five days after the House opened in March.

Mr. Shibley: March, yes.

Hon. Mr. Davis: Right.

Mr. Shibley: It was part of the Throne Speech.

Hon. Mr. Davis: That's correct. This was the part of the Leader of the Opposition's contribution in the Throne Speech debate.

Mr. Shibley: Now, then, that Throne Speech debate, and I am looking at the Hansard for March 26th, 1973, wherein Mr. Nixon said he wanted to refer - I am looking at the right hand column sir half-way down.

Hon. Mr. Davis: I don't have, I don't think, that Hansard here, Mr. Shibley.

Mr. Shibley: Well, I don't think it is terribly important, other than to identify the time. "I want to refer specifically to the new head office for Ontario Hydro which is

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(Mr. Shibley)

presently under construction at the corner of ~~University~~ University Avenue and College. I know that my good friend and colleague, the member for St. George knows, or at least some of her supporters know about that place because of her charming pictures stapled up around that corner and to great effect . . . " And he went on - would that be the date on which this issue was rearing its head again, so to speak.

Hon. Mr. Davis: As far as our office is concerned and as far ~~as~~ I was concerned, Mr. Shibley, this would be the case. To the best of my recollection, there was little activity in January or February. I think that this would be the next relevant date.

Mr. Shibley: Now sir, it appears again from a diary note that you had a meeting on March 26th with Mr. Cronyn. Was the subject of that meeting in any way related to the Hydro head office building?

Hon. Mr. Davis: No, Mr. Shibley. That discussion was related very specifically to COGP, March 26th. It did not relate to the head office building at all.

Mr. Shibley: And do I take it, sir, that that appointment again would have been made in advance of that date?

Hon. Mr. Davis: I can't say that specifically, Mr. Shibley. ~~It could~~ It could have been. At that particular hour I would think so although there are ~~occasions when~~

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(Hon. Mr. Davis)

~~at that particular House I would think be without there, on~~
occasions when you do see people on, shall we say, very short notice.

Mr. Shibley: Now I want to go back and cover the period after Mr. Nixon tabled his question in the House, December 1, right to the present date, and ask you have you had discussion with Mr. Moog referable to the issues being considered by this committee at any time during that period of time?

Hon. Mr. Davis: Well I don't know that I could use the term "referable to issues being considered by the committee," Mr. Shibley. Obviously I had discussions with Mr. Moog; I believe some in December. They related - well they didn't relate to - they were really in response to some of the concerns being expressed. I think it is fair to state that the conversations were somewhat repetitive. Mr. Moog was assuring me that the contract itself, in his view, was a good contract; the firm had capacity to perform and so on. It didn't relate obviously to the question that I said I felt was important for this committee when I introduced the - because ~~at~~ at that stage there was no indication of "the threat", so that the basic discussions with Mr. Moog, and they weren't really discussions but conversations, related to his feelings ~~on~~ the issue.

I can recall one discussion, and I think it was at that time, I think it was before the articles in the Globe in April 28th and 30th, ~~he~~ he did spend quite a bit of time on one discussion related to - I forget what you call it - the commercial area of the building; he spent some time in saying how important he thought it was that this would be, in his view, a positive thing for the environment of University Avenue, I can recall that part of the discussion very specifically.

Mr. Shibley: This took place in December?

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M.F.

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Hon. Mr. Davis: I would think there were two or three conversations, Mr. Shibley, in December after the questions were asked. There was one other conversation later in the month which did not relate to Hydro, it just related to a call wishing us a pleasant holiday season and that was the extent of it.

Mr. Shibley: Then were you receiving assurances from Mr. Moog on these occasions that all was well with the contract and the best thing that would happen is if it were aired?

Hon. Mr. Davis: Of course I hate quoting other people, but I think it is fair to state that Mr. Moog in his conversations felt that it was a very positive kind of contract and he really felt that it was a building of significance.

Mr. Shibley: Did he give you any information preferable to his dealings with Hydro prior to November, 1971?


Hon. Mr. David: No, he did not discuss with me the process or his conversations with anyone at Hydro during that period of time.

Mr. Shibley: ^{I see.} And did he discuss with you any part of his dealings with Hydro in the subsequent period, December, '71, and following?

Hon. Mr. Davis: No, I don't believe so, Mr. Shibley.

Mr. Bullbrook: I'm wondering, could you clarify one thing for me with the Premier? I think I have got ~~by~~ the chronology wrong here, but there was a memorandum, my notes show, in the diary of Mr. Moog in November, I take it, of 1971, to discuss with the Premier something about Christmas, and I am just wondering, that was never followed up, and I would like to follow that up in the context of whether there was any opportunity for discussion at that time.

I don't in any way infer, Mr. Premier, I want you to realize this, ~~that~~ but I want to refresh your mind, I want to find out whether they did, in fact, enjoy each other's company *during* in the Christmas season of 1971, and where, and whether there



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M.R.

(Mr. Bullbrook)

~~... enjoy each others company during the Christmas season~~
~~of 1971 and where and whether there~~ was any discussion at that time?

Hon. Mr. Davis: Well, I 'd make two observations. One, Mr. Bullbrook, yes, there was an opportunity at that specific time. I think it is also fair to state that if Mr. Moog had wanted to find an opportunity or if I had, he has my telephone number and the opportunities would be literally unlimited.

I don't think that because it was Christmas or any other particular period in the calendar year that was any greater or ~~less~~ lesser opportunity. I mean, there is no question about it. If Mr. Moog had wished to discuss w this with me, he could have - I don't say at any time but he had my phone number.

Mr. Shibley: You mean, he could have in the sense that he ~~was~~

Hon. Mr. Davis: He knew where to find me.

Mr. Shibley: Yes, but not "could have" in the sense that you were willing to discuss this?

Hon. Mr. Davis: That is correct.

Mr. Shibley: I've learned to be careful with questions and answers in this room, sir.

Mr. Bullbrook: Mr. Premier, recognizing your position, my questions are always, always in the context of that. Did you vacation with Mr. Moog in the holiday season of 1971?

Hon. Mr. Davis: Did indeed, Mr. Bullbrook.

Mr. Bullbrook: Do you mind telling us where you did vacation with him?

Hon. Mr. Davis: No, I ~~do~~

Mr. W. Hodgson: I don't think that is relevant, ~~My~~
~~inaudible~~ Chairman.

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M.R.

Mr. Shibley: I'm afraid, Mr. Bullbrook, I would agree with that.

Mr. Chairman: I don't know why the place would have any relevance ~~on~~

Mr. Bullbrook: Well, the reason for it is that I could, ~~in~~ in my own mind, see quite well the Premier's position that, ~~in~~ in view of the friendship of Mr. Moog with himself, if Mr. Moog wanted to take ~~some~~ a positive action and pick up the phone and phone, he could discuss the question of the Hydro building with the Premier. I'm just thinking that perhaps the togetherness might have been of such a kind and nature as to engender discussions of all kinds and ~~the~~

Mr. W. Hodgson: That doesn't affect all people the same, though, Jim.

Mr. Bullbrook: Well, I want to find out if it affects the Premier and Mr. Moog.

Hon. Mr. Davis: I would say to Mr. Bullbrook, Mr. Chairman, that while togetherness is ~~relevant~~ in all matters, particularly as it relates to one's wife, family, and so on, that as far as ~~as~~ I am concerned, ~~some~~ geographic location is not ~~relevant~~ to togetherness.

Mr. Chairman: Gentlemen, it's almost 4.00 o'clock. We have had the Premier in the stand now for about an hour and a half, and questions in the House generally last 45 minutes and he has some colleagues to help share them.

Hon. Mr. Davis: Some days it feels longer.

Mr. Chairman: But he has no one to help share them today so I think it's reasonable that we should take a ten-minute break at this point.

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4.15-4.20 pm
V.H.

Mr. Chairman: Ladies and gentlemen, I call the committee back to order. Mr. Finlayson, I would like to know whether you are ~~now~~ prepared at this time to produce the various documents and the file we asked for this morning?

Mr. Finlayson: No, I am not, Mr. Chairman.

Mr. Chairman: All right.

Mr. Shibley: Well, Mr. Finlayson, can you advise us, so that he may be served with a warrant, where Mr. Moog is?

Mr. Finlayson: I am not going to tell you that. Are you looking for him? If you want Mr. Moog, he will show right up here at this committee. He has never stayed away for any reason except that he has got other business commitments. If you want Mr. Moog, I will bring him here tomorrow at ten o'clock or at whatever time you want him.

Mr. Chairman: Well, I think you realize, Mr. Finlayson, that ~~the~~ warrant has to be served before we demand too much although on the other hand, you are here as counsel and you have seen or heard the requests I have made and the ruling of the committee, and I am not so sure that the warrant is necessary but we want to serve Mr. Moog with the warrant to produce ...

Mr. Finlayson: Well, if Mr. Shibley would indicate ~~would like me to~~ when he ~~indicates~~ bring Mr. Moog here, I will bring him. He doesn't have to have a warrant or anything of that nature. He is perfectly prepared to appear and testify before the committee. The only reason he isn't here today is that I wasn't asked to bring him. I assumed that he was standing down until after Mr. Davis at least had finished his testimony.

Mr. Chairman: We have, however, asked for the papers and you know that we wanted them and Mr. Davis' testimony and I gather you are at this time refusing to

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produce them in any event?

Mr. Finlayson: I am sir.

Mr. Bullbrook: Could you enquire of Mr. Finlayson whether that will be the continued instructions of his client or his own personal direction subsequent to the service of the Speaker's Warrant upon his client?

Mr. Finlayson: Well I am a great believer in taking one day at a time, Mr. Chairman. What I have been asked to do now, I take it, is to produce Mr. Moog and if Mr. Shibley or the Chairman

Mr. Chairman: No. We have asked you to produce the documents.

Mr. Finlayson: Well I told you. I have given you a flat answer to that. Its no'

Mr. Chairman: All right. We will have to take the next step.

Mr. Shibley: I just want to make it clear as a matter of record and I must say, Mr. Finlayson, because your client has attended each and every day of this committee hearing, save for today, and I gather he did not consider it important enough to attend today.

Mr. Finlayson: That is not the fact, Mr. Shibley. Mr. Moog has not attended each and every day of this enquiry and I wish you wouldn't make those kind of statements.

Mr. Shibley: I expected him here today. Let's leave it at that.

Mr. Finlayson: Did you ~~me~~ speak to him or to me and ask that he be here?

Mr. Shibley: No I didn't.

Mr. Finlayson: All right. Thank you.

Mr. Chairman: But we have asked for the documents, Mr. Finlayson, which I assume are in your possession and which I gather you are denying to us.

Mr. Finlayson: They are not in my possession. I am telling you, they are not being produced. They are irrelevant.

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V.H.

Mr. Bullbrook: I would suggest something to you, if I may. I would suggest to you that we assure this committee that the necessary Speaker's warrant be served on Mr. Moog with or without - preferably with - the co-operation of his counsel tonight. I would suggest that we come to grips with this problem tomorrow so that anyone involved with this committee will understand the direction and wishes of this committee.

Mr. Shibley: Thank you. If you will advise me of where Mr. Moog is available this evening, Mr. Finlayson, I would like that warrant served on him.

Mr. Finlayson: Why don't I bring him here tomorrow morning and you can serve him right in the committee? You know what my attitude is.

H-1332 follows

H-1332-1

(Mr. Shibley)

~~I'd like that warrant served on him~~

~~Mr. Finlayson: Why don't I bring him here tomorrow morning.~~

~~You can sit him right here in the committee. You know what my attitude is.~~ It isn't going to cause any delay.

Mr. Chairman: Well I don't know. We want to have him bring the documents with him, and if he comes tomorrow and tells us he hasn't got the documents that is another matter.

Mr. Finlayson: He is not going to bring the documents with him, Mr. Chairman, I can assure you of that.

Mr. Bullbrook: That is the point.

Mr. Finlayson: I had thought that the chair had made a ruling. I'd advised you that because I do not regard the material as being relevant that I proposed not to produce it and I do not propose to comply with the chairman's ruling. Now if in addition to that Mr. Shibley wants to serve him with a warrant then all I can say is ~~that~~ I'll make Mr. Moog available so that piece of paper can be served on him. I don't want there to be any suggestion that Moog is ~~in~~ in any way absenting himself for that reason.

Mr. Chairman: All right. If you would arrange then to let Mr. Shibley know where he may be this evening ~~and we~~ we would appreciate that.

~~Mr. Shibley: I want him served —~~

Mr. Finlayson: I don't think I want to do that. I don't want Mr. Shibley on Mr. Moog any more. I am going to proceed very formally from now on. And I'll produce Mr. Moog here at this hearing at 10 o'clock tomorrow morning. I don't want to hear any more of these conversations that counsel had with me or with Mr. Moog or that were supposed to be off the record.

Mr. Shibley: Well now, wait a minute, I'm not going to stand for that comment being ^{made} ~~made~~ a record. Mr. Finlayson, I want it very clear that there was no off-the-record content of the discussion with you. Now I'd ask you to correct the record in that respect.

Mr. Finlayson: Mr. Shibley, I told you.

Mr. Shibley: Mr. Finlayson, I want it corrected.

H-1332-2

Mr. Finlayson: Will you listen to me?

Mr. Chairman: Gentlemen—

Mr. Finlayson: You are bullying everyone around here. Just don't try it on me. It won't work.

Mr. Chairman: Mr. Finlayson, we are not going to carry on this any more ~~at~~ ^{with} the Premier here. We will proceed now with the Premier, and we will worry about the matter of Mr. Moog and his attendance and the documents tomorrow.

Mr. Bullbrook: Mr. Chairman, we have got to recognize the direction that we are going, and I apologize to the Premier for subjecting himself to this. But sir, we as a committee have a responsibility, right? You as chairman have ruled in connection with that responsibility. Now I think it would delay our undertakings and certainly, as far as the public are concerned, I think it would water, in the public eye, the efficacy of our undertakings. If we are to understand Mr. Finlayson's last comment, ~~Mr.~~ Mr. Moog will not be bringing the documents with him ~~tomorrow~~ tomorrow.

Mr. Chairman: That is what I understand him to say.

Mr. Bullbrook: As I understand, if you follow that logically, it means that we can't then come to grips with the problem. If Mr. Moog is served tonight, with ~~our~~ without the acquiescence of counsel, and may I say to you, you as a lawyer recognise that we are not ~~beholden to~~ beholden to Mr. Finlayson as far as serving his client is concerned.

Mr. Chairman: But

Mr. Bullbrook: Let me just finish for a moment. I'm sorry sir. I really think it is important to us, having regard to our stature as a ~~committee~~ committee of the Legislature of Ontario, to see to the expeditious resolution of our orders, and I really suggest to you, sir, that our counsel, in cooperation with the Speaker and all the other necessary officers of the Legislature, see that Mr. Moog is served to night if at all possible so that we can resolve the matter tomorrow.

Mr. Chairman: I'm for that, but at the same time we can't force Mr. Finlayson at this present time to tell us where ~~the documents~~

H-1332-3

(Mr. Chairman)

his client will be tonight if he doesn't want to.

Mr. Bullbrook: No, I'm asking ~~you~~

Mr. Deans: Mr. Chairman ~~you~~

Mr. Finlayson: Let's stop all this. I'll go get him right now and bring him down here.

Mr. Chairman: That would make it easier for us.

Mr. Deans: Well, is that the resolution of it? ^{that} Mr. Finlayson is going to get Mr. Moog?

Mr. Finlayson: After I bring him down here what you are going to do with him I don't know.

Mr. Chairman: Well, ^{then} I may want to serve a paper on him.

Mr. Deans: I want to ask for clarification. I can recall during another hearing that I took part in that warrants were served and that they ~~were~~ were served using the offices of the Ontario Provincial Police for that purpose, and that it would seem to me that the appropriate thing to do would have been to have informed the Ontario Provincial Police of the address of Mr. Moog and his business address, and give them the warrant and let them serve it.

Mr. Walker: It won't be necessary now.

Mr. Chairman: That's what I thought we would probably go on to do, but the committee pushed for an answer now and this is ^{the} result of the pushing, and I think it ~~would~~ make it easier for everybody concerned if that ~~was~~ was the case as long as we have got the warrant ready, and I understand it is.

Mr. Shibley, if you would proceed with the Premier.

Mr. Renwick: Mr. Chairman, if I may. Mr. Finlayson is not here, but he will be able to read it in the record. I would ask Mr. Chairman, that you would exercise the authority of your position in the chair to prevent that kind of tactic being used on this committee. I don't appreciate it. I don't think any member of the committee appreciates it, and it does not help in any way the furtherance of the duty of the committee. I simply want to say that I consider the tactics of counsel for Mr. Moog totally unacceptable to me. I am sure that other members of the committee

H-1332-4

(Mr. Renwick)

share that view.

Mr. Chairman: Thank you, Mr Renwick.

Mr. W. Newman: Just one question to Mr. Shibley, Mr. Chairman. We really can't complete the Premier's testimony without these papers can we in order to expedite the Premier's position and let him get away, busy as he is?

Mr. Chairman: ^{That is} One of the hopes, that we might have them here this afternoon. But I am not so sure that that is the only answer ^{that} that is the only way out of the situation, Mr. Shibley, any comment on that?

Mr. Shibley: Mr. Chairman, it may be academic in ^{the} a sense, that if I understood counsel correctly he is not intending to produce the file in any circumstance, whether the warrant is served or not, and whether his client is here or not, and that leaves this committee in the position ~~what~~ as I understand it, that it must refer the matter to the House so that the House can consider whether it will hold Mr. Moog in contempt, in that ~~matter~~ respect.

Mr. Bullbrook: Well there is some equivocation about that and I think Mr. Renwick will agree. I ~~was~~ heard him during the course of my original comments at least, sotto voce, make the comment, "let's not anticipate matters," and I had come to the conclusion from Mr. Finlayson's response that perhaps the service of the warrant might change. ~~Then of course, he said.~~

H-1333- 1 follow

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4:25 - 4:30 pm

C.B

(Mr. Bullbrook)

~~from Mr. Finlayson's response that morning the service of~~
~~the warrant that morning.~~ Then if course he said that tomorrow
morning whether he was served or not he wouldn't be bringing
the document. But I really think technically if I might suggest
most respectfully to counsel that if we can facilitate the
Premier by proceeding with him at the present time and after
the service is made then we as a committee subject to your
advice, must establish what our posture is.

Mr. Chairman: I don't want to state my position
on it at this time because I'd like an opportunity to review
the law perhaps with Mr. Lewis and I think maybe Mr Shibley
might appreciate that opportunity too. So I don't really
know what our position will be if the warrant is served and
if it is ignored. Now whether we have authority to act as
a committee or whether we must return to the House for ~~a~~ direction
I am not certain, so I want to leave the question open. I'm
not so sure that having been on notice that he is represented
here by counsel whether it makes any difference whether a warrant is
served or not.

However, those are positions we can look at and that
is why I suggested let's proceed with the Premier now and worry
about these other matters tomorrow.

Mr. Finlayson: Mr. Chairman, Mr. Moog will be down
here before five o'clock.

Mr. Chairman: Thank you Mr. Finlayson.

Mr. Shibley: Mr. Chairman before we go on, I
cannot permit to leave neglected counsel for Mr. Moog's last
statement inferring that any part of the interview I conducted
with Mr. Moog and himself was off the record. I made it abundantly

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C.B.

(Mr. Shibley)

clear that the production of that file, my review of it, and any exchange referable to it and any information elicited therefrom, was not privileged, was not protected and that ^{if} I consider the material relevant introduce it before this committee.

Mr. Finlayson: You certainly got around to that position before the two days that we talked ~~and~~ ^{WERE} gone, I'll admit that. But you always seem to put things ~~in~~ here ~~there~~ as if you walked in and you read this off a piece of paper to me when it was in position that it involved over the course of two days of discussions. I don't think you are very frank about these off the record discussions Mr. Shibley, and you won't have the opportunity to have anymore. I can assure you so there will be no future misunderstandings.

Mr. Chairman: If you will proceed Mr. Shibley.

You

Mr. Shibley: ~~I want~~ certainly take every opportunity to make speeches Mr. ~~Shibley~~ Finlayson but as I say I will deal with it when we get to the evidence. Mr. Premier I apologize to you for having had to have this exchange in your presence.

Mr. Chairman: You can see that this is not the most enviable job that you've given to me Mr. ~~Prem~~ Premier, or the House has given to me.

Mon. Mr. Davis: I was going to say Mr. Chairman It was the House.

Mr. Chairman: I can't blame you for this one.
Now Mr. Shibley, will you proceed sir, please?


H 1333-3

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4:25 - 4:30 pm

C.B.

Mr. Shibley: Mr. ~~Rev~~ Premier I was attempting to review with you communications held between yourself and a variety of people. I think we had covered Mr. Cronyn, I want to just deal with any further discussion or communication that you might have had with Mr. Moog referable to the manner in....



H1334 to follow

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4:30 - 4:35 pm
JLP

H-1334-1

(Mr. Shibley)

~~further discussion or communication that you might have had with Mr. Moog referable to the manner in which Hydro had let this building?~~

Hon. Mr. Davis: Yes, I don't think there are any conversations, Mr. Shibley, related to the manner in which Hydro let this contract.

Mr. Shibley: All right. The only ones you can recollect are those that you have recorded already?

Hon. Mr. Davis: Yes.

Mr. Shibley: Dealing next with Mr. Gathercole. Did you at any time subsequent to Mr. Nixon tabling his questions on December 1, have any discussion with Mr. Gathercole respecting the manner in which Hydro had let the contract?

Hon. Mr. Davis: No, I don't believe so. By that time, Mr. Shibley, we, of course, had the document, we had the answers that were tabled in the House, and I don't recall any discussions with the chairman of Hydro related to the process that was used. I can't recall that kind of conversation.

Mr. Shibley: I want to specifically ask you about certain conferences. You also had conferences with Mr. Gathercole in February, on February 22 and February 27. Did they in any way relate to the manner of letting of the Hydro head office building?

Hon. Mr. Davis: No, they did not. They ~~referred~~ ^{referred} to another very specific matter, Mr. Shibley, but it was not the Hydro head office building.

Mr. Shibley: In terms of Mr. Fleck, of your own office, what discussions have you had with him, and what information elicited from him subsequent to the tabling of the Nixon questions?

Hon. Mr. Davis: I don't think there was any really new information subsequent to that communicated to me by Mr. Fleck.

Mr. Shibley: I see. Now, Sir, again in that latter connection, do I take it, therefore, that even while this committee hearing has been convened and evidence has been lead, that you have not received further information from any source referable to the subject matter of the issues before this committee otherwise

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4:30 - 4:35 pm
JLP

(Mr. Shibley)

than what's in the transcript?

Hon. Mr. Davis: No, I think anything that's been communicated to me or to the office, Mr. Shibley, has already been made here as a ^{matter} ~~part~~ of record; or I have done what else needed to be provided, hopefully, here today.

Mr. Shibley: There are a few ^{with} ~~seriatim~~ items I would just like to deal with you briefly.

Hon. Mr. Davis: What items?

Mr. Shibley: Individual items.

Hon. Mr. Davis: Oh, ~~many~~ sorry.

Mr. Shibley: Seriatim items.

Mr. Chairman: I think ^{these} ~~these~~ have been numbered consecutively there, Mr. Shibley?

Mr. Shibley: No, On March 9, 1972, Exhibit 34, which I'm having produced here - you will notice in that document, which is a memorandum of Mr. Gathercole, that he talks about, in the second paragraph, "I should like to make a submission to the Premier and other members of the Cabinet early in April." Do you know of any such submission, or was any such representation made by him to you or to the Cabinet subsequent in point of time to March 9?

Hon. Mr. Davis: No, Mr. Shibley. I would assure the Chairman and members of the committee we did a very thorough study of the minutes of Cabinet. There was no reference to the Hydro head office.

Mr. Shibley: Again, to complete the —

Hon. Mr. Davis: That is with the exception of the presentation, of course, in ^{the} ~~February~~ of 1973.

Mr. Shibley: Yes. I should tell you, Mr. Premier, that there was a fairly complete document prepared, dated April 10, by Mr. Candy and Mr. Mink, which I will ask you to look at momentarily; Exhibit 67. Have you ever seen that document?

Hon. Mr. Davis: I don't believe I've seen it until it became an exhibit here, Mr. Shibley; at ~~the~~ least, ~~until~~ to the best of my recollection.

Mr. Shibley: ~~This document was never the subject matter of any review by yourself.~~

(Tape H-1335 follows)

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4.35 - 4.40 pm

H 1335 - 1

AA

(Hon. Mr. Davis)

~~such a point it would be correct to say, Mr. Shibley, at least
to the best of my recollection.~~

Mr. Shibley: So that this document was never the subject matter of any review by yourself or Cabinet.

Hon. Mr. Davis: Or Cabinet, no. That is correct.

Mr. Shibley: Now, having regard, however, for the fact that Mr. Gathercole, in his March 9th memorandum indicated he intended to make a presentation to the Cabinet and having regard for the various communications with you or your office as we have outlined today, have you any comment to make respecting ~~the~~^{the} absence of any formal participation on the part of government respecting Hydro's decision to let this contract?

Hon. Mr. Davis: No, I have no comment to make other than I made earlier, Mr. Shibley, and that is the traditional relationship between government and Hydro. Now I am expressing a personal point of view. Even if there had been, say, this submission made to Cabinet, I WOULD SAY, WITH RESPECT TO ASK Cabinet to make a decision on the basis of the proposals, etc., would have been quite impossible. I can only say that there was no need to, as I said earlier, and there was no submission to Cabinet.

Mr. Shibley: The indications in the evidence, then, at this ~~point~~^{point} in time, Mr. Premier, are as follows: Insofar as communications between Hydro and government, there was the comment passed between Mr. Gathercole and you on August 3rd, 1971, then nothing further, I take it, until February of 1972 when further comment was made to you by Mr. Gathercole. Is that correct?

Hon. Mr. Davis: That is correct.

Mr. Shibley: And the only communication thereafter was the May 11th . . .

Hon. Mr. Davis: May 16th letter.

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AA

(Mr. Shibley)

Mr. Shibley: May 16th letter to you.

Hon. Mr. Davis: Yes and then the press release.

Mr. Shibley: Which was not - and then the press release in July. Is that correct?

Hon. Mr. Davis: That is correct.

Mr. Shibley: And otherwise, nothing emanated from Hydro to you to elicit any participation in the decision-making process on the part of government.

Hon. Mr. Davis: No, this is ~~not~~ correct and I would just go back, once again, so the record states, Mr. Shibley, is that I think it is fair to state that the Chairman of Hydro could have, from the conversations in February of 1972, taken it that the government had no negative reaction to them proceeding.

Mr. Shibley: Well, that's what I am interested in sir. Is this a case of Mr. Gathercole providing you with just enough information, from time to time, to assess whether there was a negative reaction on the part of government?

Hon. Mr. Davis: No, I don't think it was a case of that Mr. Shibley. You are asking me now to make judgements and I don't think this would be really very appropriate. I can go over again the factual situation, as I say, the traditional relationship with the Ontario. I mean, I don't want to draw any parallels and I know there are some ~~distinct~~ distinctions but we weren't asked to comment on or get involved in close to a billion dollar expenditure at Pickering and I doubt if we had the capacity to do so and I think really any judgements the committee wants to draw, they should do this. I really don't think I can or should at this moment.

Mr. Shibley: Well, I am not asking for a judgement, ~~the~~ Mr. Premier, but what we are trying to understand

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(Mr. Shibley)

is the modus operandi, the method of dealing ^{with} ~~of~~ Hydro when it came to the ultimate veto that was available in government as it was exercised in 1969. At some point of time, government, I gather, could ~~take~~ step in and say no. It now appears that there was never any formal submission to government for approval by Hydro and that the only communications with anyone on the part of government were the ~~the~~ incidental conversations held between Mr. Gathercole and yourself, the letter of May 16th and the sending to you of the press release.

Hon. Mr. Davis: I think that is a very fair resume of the facts, Mr. Shibley.

Mr. Shibley: Yes. Now, what I would like to know is whether this is a normal practice, a usual practice, or -
~~I would just like to understand~~

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(Mr. Shibley)

~~...I'd like to know is whether this is a normal practise,~~
a usual practise or - I'd just like to understand whether
you consider this an appropriate manner in which Hydro
should have handled that aspect of the matter?

Hon. Mr. Davis: Well, I want to be helpful,
Mr. Shibley, but I think you sense that you're asking me
to pass an opinion as to whether this was an appropriate
way for Hydro to act. I would only say this and I come back
to it, that the government has not traditionally been
involved in the decision-making process at Hydro. There
is no question that if I had said to Mr. Gathercole in
February "Mr. Gathercole, for this reason or that reason,
as it was in 1968 or 1969 in our view because of economic
conditions, ^{it is} not wise, I am relatively ~~confident~~ confident
that the chairman of Hydro would have accepted that point
of view." I could only say that in my experience Hydro has
dealt with multi-million dollar projects year by year and the
involvement of the government in the awarding of contracts
or the decisions, the design, what have you, has never been
part of government function.

I guess what I'm trying to say is that I know it
may appear to some to be somewhat unusual but I think looking
at the relationship ~~is~~ between government and Hydro, it really
isn't that unusual.

Mr. Shibley: I must say, sir, that I'm having a
little difficulty in my own thinking and I'm looking for you
to assist this committee, through me, through my questions.
~~On the other hand,~~ It, on occasion, occurs from the documents that
Mr. Gathercole considered it necessary to make a submission
to Cabinet to seek your judgement and so on. On the other hand,
he never did make a formal submission and there was never any
formal review effected by Cabinet or otherwise, with the
possible exception of Mr. Candy's outline of the nature of the
building and so on in February of 1973, which was long after the

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event but I'm just trying to understand why Mr. Gathercole would have spoken and written in those terms and there be no formal assessment of the project expected even, let alone effected by government.

Hon. Mr. Davis: Well, Mr. Shibley, I can't, of course, speak for the chairman of Hydro. I guess you could guess that there were occasions when the chairman wondered in his own mind whether he wanted some government assistance in the determination, I don't know.

All I can say to you, Mr. Shibley, and to members of the committee, that there was no need to. I think either under the Act or in any sort of traditional sense. I repeat from my experience in Cabinet, without getting into details, that while Cabinet has always had an interest in the general policy directions of Hydro, obviously, that we have not become involved in the day-to-day operation, the decision on design contracts, and so on.

I, as I say, I don't think if one has lived with the relationship between government and Hydro over the years that the procedures were "unusual". I really can't help you much more than that.

Mr. Shibley: All right, sir. Now, on another completely unrelated topic, sir. I gather from other statements you have made elsewhere that you are not aware of the campaign contributions, if any, made by Mr. Moog to the Progressive Conservative Party?

Hon. Mr. Davis: Well, Mr. Shibley, I will just repeat for you the policy that I have pursued as Leader of the Party, not as head of government and that is that I have not been made aware of contributions of any person or corporation to the Conservative Party. I have always felt that it's much better to conduct one's responsibilities without this kind of knowledge and as a result I have not, over the ~~period~~ period of time that I have headed the Conservative Party,

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✓

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(Hon. Mr. Davis)

~~become involved in~~

the question of knowledge of who contributed to the party,

~~and~~ I have always felt that this is an appropriate stance for a leader to take, although, as the members of the committee know, we made the determination some months ago, and I expect we may see some results of this determination this fall, that I am committed, as is the government, to taking other ~~steps~~ steps with respect to disclosure.

Mr. Shibley: And just to be complete again, have you any knowledge or information that the amount, if any, of the campaign contributions of Canada Square, or Mr. Moog, or any companies associated with them, had anything to do with the obtaining of this contract from Hydro?

Hon. Mr. Davis: Mr. Shibley, I assure you that whatever contribution, if any, made by Canada Square, or any related company, not only in this instance, ~~but~~ in any contract with the government, ~~it~~ has no relevance to the awarding of any contract at all, that includes this one, in case I didn't make myself abundantly clear!

Mr. Shibley: Now, you provided certain information referable to this contract ~~=====~~

Mr. Deans: Mr. Shibley, are we going to ~~continue~~ ^{proceed} with campaign contributions?

Mr. Shibley: No.

Mr. Deans: Can I ask a question? Mr. Premier, does your policy with regard to your knowledge of campaign contributions to the Conservative Party apply equally to campaign contributions to your own election?

Hon. Mr. Davis: It does, Mr. Deans. I have purposely not sought out, in fact, I have asked not to be informed, as to who contributed to the election campaigns in the riding of Peel North.

Mr. Deans: Does this apply equally well to the campaign

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(Mr. Deans)

contributions in the leadership contest?

Hon. Mr. Davis: Yes, I can tell you that it applied there very specifically.

Mr. Chairman: Thank you, Mr. Deans. Mr. Shibley?

Mr. Shibley: I was just going to ask you, on another unrelated topic, Sir, you reported to the House certain information referable to the contract. I am thinking in particular you reported that Hydro was expected to save, I think, \$2.4 million per year, and other similar facts. In respect of all such information, I gather from the documentation which I have seen that you have relied wholly upon information provided to you by Hydro?

Hon. Mr. Davis: Yes, this would be correct, Mr. Shibley. I must confess I do a little mental arithmetic on my own from time to time in the House on the spur of the moment, but in this instance, when we were discussing it, the information was provided to me. It was not my own mathematics. That is a horrible confession to make to the member for Sarnia.

Mr. Shibley: But to the extent that any errors may have crept into those calculations for whatever reason ~~-----~~

Hon. Mr. Davis: I think I was very specific to say in my debate on that occasion that, unlike others who had made references to economics, ~~that~~ I was providing for errors and omissions.

Mr. Shibley: Right. I have no further questions.

Mr. Chairman: Thank you, Mr. Shibley. Any members of the committee have any questions that they would like to ask the Premier? Mr. Hodgson?

Mr. R. G. Hodgson: Your reference to the understanding ~~between~~ how Hydro conducts its affairs between the Cabinet or the government would be from first hand knowledge when you were vice-chairman, I believe?

Hon. Mr. Davis: That is only a part of it, Mr. Hodgson.

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(Hon. Mr. Davis)

It would also come from some 10 years as a member of the Executive Council.

Mr. R. G. Hodgson: The other - are you aware of contacts between the minister reporting for Hydro on the matters of the new Hydro building, such as perhaps, Mr. Kerr when he was the minister responsible for reporting for Hydro, Mr. Auld or Mr. A.B.R. Lawrence?

Hon. Mr. Davis: No, Mr. Hodgson, I don't think that they would have any information that is not already available to the committee.


Mr. R. G. Hodgson: Thank you.

Mr. Chairman: Mr. Bullbrook?

Mr. Bullbrook: Mr. Premier, before I begin I want to clarify one thing in your mind so that we don't have any misunderstanding.

In asking you this morning, or supporting the position that you take the oath, there was no inference in that that your evidence would not be accepted by me without the oath as being substantive and true.

I wanted you to know that I thought, from the public point of view -----



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C.B.

(Mr. Bullbrook)

~~by me without the public at large being aware of it and I~~
~~wanted you to know that I thought that the public point of~~
~~view~~ they might not understand ~~it~~ what might well be a rather
sophisticated distinction between our position as fellow
members of the Legislature and the public at large.

Now there is just one line of question I want
to take up with you and that is in connection with the visit
to the Swiss bank. As I understand your evidence and I am
a little ~~more~~ vague, I'd ask you to interrupt to correct
me if I'm wrong. Part of the intention in the social trip
sponsored by you, the intention sponsored by you, was to
seek out advice in ~~more~~ connection with international fiscal
policy or monetary policy ~~current~~ at the time.

Hon. Mr. Davis: Just one distinction, Mr. Bullbrook,
so that there is no misunderstanding, ~~There~~ was no intention
to do anything, quite frankly, other than holiday when we left
from Toronto to head east. The thought to have a discussion
came sometime after our arrival. I just want to make it very
clear that there ~~is~~ ^{was} no thought in anyone's mind, well I can't
speak ~~of~~ for others, there was certainly no thought in mine,
and without my thought there wouldn't have been the visit to
the financial institution, this did not occur until we arrived
overseas.

Mr. Bullbrook: I take it, sir, that the purpose of
the visit was recognizing the possibility of your future
obligation, at the time. That you wished to acquaint yourself
with the total aspect of international finance as it might
relate to the government of Ontario?

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Hon. Mr. Davis: No, not as it related to the government of Ontario, Mr. Bullbrook. The main purpose from my standpoint was to talk to people who had some knowledge of the international economic situation, because ~~and~~ what I sensed both before I left and very frankly in the few hours I had in London was an impending change in US economic policy. I think it was, I'm sure, apparent to you and to others who were following it, ~~and~~ I felt that perhaps there would be somebody and I must say that the gentleman that I did chat to had some, I think, rather extensive knowledge, certainly some very real insights. But this was the area, it wasn't a question of international finance, if I can describe it this way, as much as the question of an economic evaluation of the international situation. It wasn't foreign exchange rates, borrowing, or what have you. It was, is inflation major? Are our neighbours to the south faced with some fairly serious problems? I just hope I won't be ~~misunderstood~~ misunderstood by the press, I recognize this may not be the responsibility of a provincial Premier, but I knew I was mentally - well I knew mentally I was facing an election fairly soon and I just wanted to get as much information that might be of some assistance to me.

Mr. Bullbrook: I don't want to direct you into a line of questioning that would in any way impinge upon ~~any~~ the sanctity of your responsibility, so if I'm doing that I want you - I think you recognize, having regard to my interjection this morning, the vital concern that I have with respect to the responses made by some of your cabinet colleagues to the members of the Legislature and that's the main thrust of my questions, sir.

I take it, again without invading your privacy, that your interest was as Prime Minister of Ontario, not as

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(Mr. Bullbrook)

William G. Davis, as person.

Hon. Mr. Davis: Quite, if it had of been a ~~personal~~ personal interest, Mr. Bullbrook, I mean I doubt I would have been there.

Mr. Bullbrook: Right. I think you and I are similar in that respect that we don't have too many occasions personally to warrant concern about total international fiscal and monetary affairs at the time.

Hon. Mr. Davis: That is I think true.

Mr. Bullbrook: Now I want to refer ~~to~~ you, Mr. Premier, to the Hansard that I referred to this morning. Because frankly this is what concerns me more than anything else and I want to refer to you - I'm sorry, sir, I don't have copies and this is somewhat unfair.

Hon. Mr. Davis: No, ^{later, Jim,} ~~just~~ just read it.

Mr. Bullbrook: This might be more than somewhat unfair since I don't have copies.

Hon. Mr. Davis: I don't think it matters.

Mr. Bullbrook: I'll try to shorten the situation. At page 2994 ^{of} the Hansard of June 12, 1973, by way of example, The leader of the Opposition in ~~questioning~~ your Treasurer put this to him and I quote, sir,

~~Mr. Robertson with the Treasury on 12th June,~~

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(Mr. Bullbrook)

the Leader of the Opposition in questioning your Treasurer put this to him and I quote:

"Mr. R.F. Nixon: In connection with the savings on loans from Germany, is the Treasurer aware that in testimony before the select committee dealing with the Hydro building, Hydro officials indicated they could not contact Mr. Gerhard Moog on one occasion, because he was in Germany "assisting the officials of the government of Ontario in meeting the financial community"? Did, in fact, Mr. Moog travel with the Treasurer's officials and assist in, let us say, finding the money for the original loan?"

The answer of the Treasurer was:

"Hon. Mr. White: I have never heard of it before in my life. The Premier says the answer is no."

Now that is quite self-evident, sir, from your evidence thus far. But there was a continuation of supplementaries that day and I am not sure whether you were in the House but I am going to read the question that I put on page 2995:

"Mr. Bullbrook: By way of one final supplementary, would the Treasurer ascertain whether Mr. Moog had any involvement, direct or otherwise, with any minister of the Crown or any official of the government of Ontario in connection with acquiring any borrowing by this government in Germany?"

"Hon. Mr. White: I will certainly inquire ^{into} ~~about~~ it."

Now, I want to ask you, Mr. Premier, perhaps I should continue on, I will afterwards if necessary so we have an understanding, do I take it that your position is that the dealings ~~was~~ with yourself ~~and~~ and the Swiss bankers and Mr. Moog had nothing to do with the possibility at any time of any financial dealings by the Province of Ontario in Europe?

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V.H.

Hon. Mr. Davis: That is quite correct. I shouldn't say in Europe, Mr. Bullbrook, because there ~~was a subsequent loan through the Deutsche Bank which was~~ was a subsequent loan through the Deutsche Bank which was finalized, if memory serves me correctly, in August of 1972. This was done. I can recall it rather vividly because I was present, not for the formalities, but, shall we say, at the conclusion because they took place during the Olympics ~~and~~ I can assure you and members of the committee that Mr. Moog was never involved in any of this at all and, from my understanding, has never been involved as an adviser ^{to} to the government in any way with respect to foreign borrowings. Now Mr. Moog will be giving evidence but that is my understanding and certainly from my own personal standpoint, since becoming Premier, he has never had any involvement with respect to the Treasury people. None.

Mr. Bullbrook: Mr. Premier, our association goes back about 25 years so my comments are with the ~~xxx~~ greatest respect both for your office and you personally. Did you have occasion to either read the Hansard or were you present in connection with these answers and the point of order raised by your former Treasurer subsequently in connection with questions put by me the next day with respect to any possible involvement by Mr. Moog in the financing of a bond issue in West Germany? I am just asking you, sir, if you were apprised or were you aware concurrently with those questions that I was asking those questions?

Mon. Mr. Davis: No. I can recall the first series of questions, Mr. Bullbrook, and the Treasurer spoke to me and I said to my knowledge that Mr. Moog had not been ~~xxx~~ involved.

Mr. Bullbrook: Had not been involved?

Hon. Mr. Davis: Right.

Mr. Bullbrook: Now, may I ask you, sir, at that time did you have any recollection at that time, concurrent with the context of the evidence that was given before this committee concurrent with the context of the questions being

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put by myself and others in the House, did you have any recollection of the meeting with the Swiss bankers at which Mr. Moog attended?

Hon. Mr. Davis: None, Mr. Bullbrook, because the question of financing of the province really was not a ~~subject~~ subject of discussion at that meeting. I am sure the one that you are referring to, ~~at~~ the loan you are referring to and the one the Treasurer's referring to is the one with the Deutsche Bank, which is a West German Bank, which was consummated in, ~~the~~ I think I can say, approximately August of 1972, where to my knowledge Mr. Moog had no involvement whatsoever.

Mr. Bullbrook: I take it, sir, it goes without saying, that because of the specificity of the questions in connection with the borrowing of money in Germany, you did not at that time ~~relate~~ ^{relate} to the Treasurer the meeting that you and Mr. Moog had?

~~Hon. Mr. Davis: No because it wasn't relevant at all, Mr. Bullbrook, in that as I say there was just no I was not there to~~



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JLP

~~(Mr. Bullbrook)~~

~~not at that time relate to the Treasurer, the meeting that you and Mr. Meeg had.~~

Hon. Mr. Davis: No, because it wasn't relevant at all, Mr. Bullbrook, in that, as I say, there was no ^{the} I was not ~~there~~ there to seek out funds for ~~the~~ Province of Ontario; it was not that kind of meeting whatsoever.

] Mr. Allan: Mr. Chairman, in listening to all the words that have been said this afternoon, there is one item that seems to me important. That is, it is important that this should be straightened out sometime during the sittings of this committee; ~~and~~ and that is the relation of Hydro to government. I think even our solicitor isn't sure.

Mr. Shibley: You are right.

Mr. Allan: ~~And~~ I am sure the public are not sure. ~~And~~ I think there is a great deal of misunderstanding. ~~And~~ I would hope, Mr. Chairman, in your wisdom that you would arrange to have witnesses here who can make a full ~~I~~ I don't think we want to trouble the Premier with this matter. ^{many} But it seems to me that the public and ~~many~~ even ^{autonomous} officials in various areas, do not understand just how ~~autonomous~~ the Hydro-Electric Power Commission are. And although the Chairman does come and pay a social call and endeavour to keep the Premier informed, I think he does that in the interest of good public relations. Would you say that, Mr. Premier?

Hon. Mr. Davis: ^{would} I think that would be part of the traditional approach, Mr. Allan.

Mr. Allan: Yes. Now, when they come to borrow money that's another thing, ~~that~~ the province has to guarantee. But, in deals such as this, I think that if the Hydro Commission had gone ahead with it and done it entirely by themselves they would have been ^{can't} they would have had the authority to do that.

Mr. Chairman: I ~~can't~~ think of a better expert than yourself on it, Mr. Allan, but we'll ~~—~~

Mr. Allan: I don't know whether the Premier would

agree?

~~XXXXXXXXXXXX~~

HON. Mr. Davis: I would be reluctant to sort of give a twenty-minute dissertation because, well, I could give you my point of view, Mr. Chairman, and it would come from some years of experience, ~~when~~ ^{on} I read Task Force Hydro/What we are in the process of presently doing. I listen to the OMEA who will make a very clear case to you if you invite them, ~~and~~ I suggest, with respect, you don't, and this is no criticism of the ~~MEMBER~~ OMEA. They will tell you that not only is there a very distinct relationship or separate relationship but that the ~~municipalities~~ ^{municipalities} are really part-owners of Ontario Hydro. I think what Mr. Allan has suggested is very useful. I'm not sure just how much help I could be other than what I have already ~~said~~ said. There is, I think, a fair degree of not misunderstanding but lack of understanding on the part of the public vis-a-vis Ontario Hydro ~~the~~ and the government. I can only repeat from my experience Hydro has operated relatively autonomously over the years; and, I was going to say, by and large, rather effectively over the years. In fact, I say that categorically, Mr. Chairman. When you look ^{at} ~~what~~ Ontario Hydro has done, and, sure, there are problems, but you will go a long piece to find on balance a better public utility.

Mr. Chairman: When you turn the switch, the lights go on, Sir.

Hon. Mr. Davis: Yes.

Mr. Allan: And you might even find some persons who would say they had done that because they had been independent in their ~~doing~~....

Chairman:

Mr. ~~Chairman~~ Mr. Renwick, really you caught my eye before Mr. Allan but I was unfair to you, Sir, you should have been before Mr. Allan.

Mr. Renwick: You certainly weren't unfair to me, Mr. Chairman, I am glad Mr. Allan raised those questions because I think it's fundamental to the specific purpose that this committee is trying to deal with. ~~And~~ ^{I think} ~~I may~~ just deal with it now, the Hydro - government relationship. I wasn't going to deal with it until I dealt with three or four other areas, ~~but~~ ^{but} as Mr. Allan has raised

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(MR. Renwick)

it, I think it's very germane to what we are talking about. The reason I think it's germane is not because of any academic exercise but that I take it, Mr. Premier, that basically your rationale of non-involvement in the decision of Hydro to proceed with its head office, and the methods which they employed, ~~and the use of the lease-back method, all being open~~

(Tape H-1341 follows)

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(Mr. Renwick)

~~Hydro to proceed with its new office, and the methods which they employed, and the use of the lease-back method, all hinged upon your specific conception of the relationship between you as Premier, the chairman of Hydro, Mr. Gathercole as chairman of the public utility, and the relationship between government and the Hydro-Electric Power Commission as you have understood it to have evolved over the years. Now I suppose, Mr. Chairman, depending on how one looks at it one can speak of it as autonomous, or one can speak of it as non-autonomous. I think, Mr. Chairman, the Premier's statement this morning probably expresses the nebulous nature of that relationship when he said that it was relatively autonomous.~~

We had just recently in the Assembly, Mr. Premier, the ~~now Minister of Energy, stating that~~ the Pickering Hydro development had a substantial impetus from your predecessor in persuading Hydro to go ahead with it. We had the specific instance yourself this morning of calling the, asking the chairman of Hydro to come because you wanted to make use of their right-of-ways.

Now I want to clear away the legalities of the question. The relatively autonomous nature of Hydro, and I put this as a question to you Mr. Premier, is reflected in the Power Commission Act which requires approval of the Lieutenant Governor in Council to a wide range of activities of Hydro, and in other areas leaves it for Hydro's decision?

Hon. Mr. Davis: I think that would be quite fair, Mr. Renwick.

Mr. Renwick: Now I take it, however, that you as Premier expect an informal, but close relationship with the chairman of Hydro and the plans of Hydro?

Hon. Mr. Davis: Yes I think, once again, it is partially traditional and partially, I guess, the manner in which any chairman, and whoever may be Premier, ~~have~~ their own method of operation. But I think it is fair to state that it is a question of being kept informed, and this is done on a relatively informal basis. If the government has a particular situation as we did say

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(Hon. Mr. Davis)

with the use of the right-of-way, the transmission right-of-ways, that it wasn't a case of me saying We're going to legislate them or we are going to have them, it was a question of my suggesting to the chairman that we thought there was some potential here. And of course nothing final has come of it. But he has been made aware as the commission has of our thought that the right-of-ways could be used for transportation situations.

Mr. RENwick: Then I take it that in a third area ~~this~~ the relationship between the government and Hydro and between the Premier and the chairman of Hydro is vital and that is the whole question of the credit rating of the province and the whole question of the demands of the government and of Hydro on the capital market.

Hon. Mr. Davis: This is true, and I think really discussion of these matters, by and large, Mr. RENwick are obviously between the chairman of Hydro and the Premier. I think it is also fair to state that the Treasurer is quite often involved, and I can only speak from really two years' experience where there is some general feeling, and I think quite frankly, the basic discussion takes place ~~at the~~ shall we say at the expert level where they do the analysis, where there is an exchange of information and some recognition that in the fiscal year there is probably an upper limitation on what should be borrowed, but ~~was~~ perhaps what the markets might be able to absorb. So there is, once again, this informal communication, and really a good part of this is done, and it is not quite as informal as between the senior staff people in Hydro and in the Treasury.

Mr. Renwick: I take it that it is perfectly..

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(Hon. Mr. Davis)

~~that part of this is done, and it is not quite so informal,
as between the senior staff people in Hydro and in the Treasury.~~

Mr. Renwick: And I take it that it is perfectly clear, Mr. Premier, that if Hydro had proceeded as they originally intended to borrow the funds and erect their own building, that the Cabinet would have been required to give the approval to that borrowing?

Hon. Mr. Davis: I think it would be part probably, Mr. Renwick, of the total capital approval that Hydro requires and would be considered in that light.

Mr. Renwick: Well I would ask, Mr. Premier, whether it wouldn't be a valid distinction to make that when Hydro is borrowing to construct generating facilities, that those are income producing assets, and that had Hydro decided to pursue the route of borrowing the capital that that would have come before the Cabinet, not as part of an overall capital budget requirement, but would have come with a separate submission to Cabinet for approval?

Hon. Mr. Davis: Mr. Renwick, it is possible it would have. I honestly would have to do a little research to see whether it could be part of the total approval or not. I quite frankly don't know, but it could have - you are quite right - it could have come as a separate request.

Mr. Renwick: Either as a part of the overall capital requirements or as an individual request?

Hon. Mr. Davis: That is right.

Mr. Renwick: I take it then that when the discussion, or conversation, or remarks, were exchanged by the Chairman of Hydro with yourself at the opening of the Pickering plant, I take it, Mr. Premier, that you were satisfied at that time that Hydro was not going to borrow the funds and that you, as you stated this morning, clearly meant to convey to Mr. Gathercole that he had

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(Mr. Renwick)

your approval to proceed with the building?

Hon. Mr. Davis: Yes, I think for me to say that if I had been the chairman of Hydro that I could have gained any other impression from the conversation, Mr. Renwick, would not be fair. If I had been the chairman of Hydro, as I said this morning, on the basis of the ~~open~~ conversation in February at Pickering, I would have said that the government is not going to say no to the development of our head office, I think that would be a fair position for the chairman of Hydro to take.

Mr. Renwick: But am I to take it, Mr. Premier, ^{that}/from that conversation there were the two elements?

Hon. Mr. Davis: Yes, there was the other element that, as I related to committee counsel because it was fairly relevant as it always is in January and February and sometimes in March, depending on the date of the budget, the question of the amount of capital that the province and Hydro should be going into the market for, that I did convey to the chairman of Hydro that whatever was determined should not, in my view, I don't think I used the word impair, although I may have in Hansard, I am not sure, should not affect the borrowing capacities of Hydro and the province.

Mr. Renwick: I will come back, if I may, Mr. Premier, in a moment to that. I want to clear up another area in connection with the visit to the bank in Zurich, Switzerland.

In exhibit 13, which was a matter of comment this morning, when Mr. Candy said in his memorandum to Mr. Sissons, "he" - Mr. Moog, referring to the meeting which Mr. Candy attended with Mr. Moog on June 11th, "he says he is going over to Germany next month as an advisor to the Premier of Ontario to arrange further financing for the province."

Would you know of any basis, from your personal knowledge, that would warrant such a statement being made by Mr. Moog?

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Hon. Mr. Davis: No, as I explained this morning,

Mr. Renwick -

(a) the Premier of the province - at least I never have
^Iand/would doubt that my predecessors ever did - ever went
anywhere to arrange - well now that may be wrong going back some
years, but certainly I never have gone anywhere to arrange
financing for the province of Ontario.

~~The basis for that, and it is the best help I can be
to the committee~~

Tape H - 1343 follows

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5.15 - 5.20 pm

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AA

(Hon. Mr. Davis)

~~Hon. Mr. Davis: Well, now, that may be wrong~~
~~going back some years, but certainly I never have gone any~~
~~where to arrange financing for the Province of Ontario. The~~
basis for that, and it is the best help I can be to the committee
and to you, Mr. Renwick, is that sometime prior to that date,
as part of the visit that we had planned for some time, I did
say to Mr. Moog that I was thinking of visiting ~~and~~ and I have
to be very careful ~~I~~ believe it was the Deutsche Bank, ~~and~~
I related it to Munich - I will be very frank about that - I
think that probably, technically, it should have been Frankfurt
but I didn't know that at the time ~~and~~ The reason I suggested
Munich was because there was a personal interest on the part
of my wife in visiting that community ~~and~~ I did suggest to Mr.
Moog that if I did visit with them ~~and~~ and it was strictly, Mr.
Renwick, a question of visiting, discussing, not there to
arrange any financing ~~and~~ that he might like to join us for the
discussion. That could be, from my standpoint, the only basis
for any reference if, in fact, this discussion took place, and
I can't comment on that. That is something that I am sure you
will ask Mr. Moog exactly what was said, but that would be the
only basis that I can think of for this reference being made.

I say this categorically that Mr. Moog has not
been, as I said this morning, a special advisor ~~to~~ to me or, to
the best of my knowledge, to the ~~state~~ government as it related
to the borrowing of funds from West Germany.

Mr. Renwick: Now, Mr. PREMIER, as I understand
it, at the meeting at the Swiss bank on the Friday, August 13th,
toward the end of the business week, or the banking hours, I
take it ~~that~~ in response to a question from Mr. Shibley, that
you, at no time, discussed that visit to that bank with any
of your colleagues, or with anyone else, at any time?

Hon. Mr. Davis: No, that is correct, Mr. Renwick.
I don't think anyone knew that we were going to visit that

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AA

(Hon. Mr. Davis)

particular financial institution before I left because I didn't know myself. ~~It~~ It wasn't the kind of visit that would be of interest to the Treasurer or to the financial people. ~~see~~ To the best of my recollection, did I in any formal, or, I don't think, in any informal way, communicate this to anyone in the government.

Mr. Renwick: And I take it then, Mr. Premier, that even though President Nixon made his relatively dramatic announcement on the Sunday evening of August 15th, 1971, and you had returned then to Toronto, ~~that~~ you saw no occasion to refer to that visit to that bank in any discussions you may have had with the then Treasurer of the province about the impact of what President ~~N~~Nixon ~~had~~ had to impose?

Hon. Mr. Davis: None at all, Mr. Renwick, in that the discussions at the financial institution in Zurich really — these were ideas and thoughts being expressed as to what might occur. There were no solutions, as I recall them, proposed at that particular discussion and I can't recall any occasion when I said to the Treasurer of Ontario that I had had some discussions at that particular institution. I can't recall having done so.

Mr. Renwick: Then, Mr. ~~4.1.1~~.

Hon. Mr. Davis: I might say that the very next day, quite frankly, after I returned from the trip, I left, if memory serves me correctly, for Mackinac or Mackinaw for the Governor's Conference on pollution matters in the Great Lakes for two or three days.

Mr. Renwick: Then, MR. Premier, I would like ^(you) to pause a moment in answering this question. Is it my understanding that the suggestion that you go to visit a Swiss bank originated and was initiated by you by a request to Mr. Moog or should my

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5.15 - 5.20 pm

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AA

(Mr. Renwick)

understanding be the reverse that Mr. Moog suggested to you that you should go to that bank?

Hon. Mr. Davis: No, I want to make it abundantly clear, Mr. Renwick, It was my suggestion not to go to that particular financial institution. I spoke to Mr. Moog, and I can't give you the precise time on our trip, when I sensed that perhaps I could gain some information, and asked him if he knew anyone in Zurich who could put us in touch with any person or persons who might have some thoughts to express. I did not specify necessarily ^a financial institution, but it was at my initiation; no question about that.

she - I follows

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M.R.

(Hon. Mr. Davis)

~~... any person or persons who might have some thoughts to express, I did not specify necessarily a financial institution but it was at my initiation, no question about this.~~

Mr. Renwick: And, Mr. Premier, do you recall that you were aware, at the meeting at the Swiss bank, about any discussion which Mr. Moog may have had referable to the Hydro-Electric Power Commission head office?

Hon. Mr. Davis: No, I hope I made this point clear this morning, Mr. Chairman, that I did not know that — well, I can only say that to my knowledge — let's be careful how I phrase this, because if there was a discussion and there was a discussion between Mr. Moog and one of the four of us in a language other than English, I don't know what they were discussing, Mr. Renwick, but I know that I did not discuss nor did I hear a discussion of — if I can phrase it that way — financing for the Hydro building.

Mr. Renwick: Now, Mr. Premier, if I may pick up the thread from the Pickering meeting, my understanding of the sequence, so far as Mr. Gathercole's evidence to us is concerned, was that he spoke with you at the time of the Pickering Plant opening in February. He stated, and I take it from your evidence this morning, that you might very well have said so, that he would — that you indicated that perhaps he should discuss it with the Treasurer of the Province.

Mr. Gathercole gave his evidence that he was away with the then Treasurer of the Province to Japan and he returned to Toronto and wrote to you on May 16. I believe it is fair to say that that was the sequence, as Mr. Gathercole wished to give it to us, of the connection between his conversations or discussions with you. And I'd like to refer now to that letter. Perhaps Mr. Shibley would help me with the number of that exhibit?

Mr. Chairman: Which was the letter again, Mr. Renwick?

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M.R.

Mr. Renwick: May 16, it's Exhibit 178.

Mr. Shibley: That's the one with the notations.

There are two. ~~There are two.~~

Mr. Shibley: Yes. The one with the notations.

Mr. Renwick: Yes. The exhibit to which I am

referring is the ~~xxx~~ original letter which was produced by Mr. Fleck during the course of his evidence.

Now, there are, Mr. Premier, the two notations in the right hand column and the evidence of Mr. Fleck is that they are in the handwriting of his assistant, Mr. ---

Hon. Mr. Davis: Mr. Rowan.

Mr. Renwick: Rowan, Malcolm Rowan. Mr. ~~Fleck~~ Fleck's evidence is that they were the substance of the comment which he, Mr. Fleck, made to Mr. Rowan and reflect what Mr. Fleck said to Mr. Rowan.

Hon. Mr. Davis: I'm not sure whether Mr. Fleck said they reflect what he said to Mr. Rowan. I'd have to get the transcript, Mr. Renwick, to comment on that or whether it was what Mr. Rowan thought Mr. Fleck had said to him. I'm not sure. I'm not trying to be facetious but I'm

Mr. Renwick: No, well, let me say that we can clear that up when Mr. Fleck is recalled to complete his evidence.

Do I take it that the - that both notations are incorrect or is just the first notation incorrect?

Hon. Mr. Davis: I can't say that both notations are incorrect. I can certainly say the first notation is incorrect. I can't comment on the second notation as to whether or not I spoke to Mr. Gathercole at that particular meeting with him re Nanticoke and Pickering. I believe that was one matter that was perhaps discussed, but it was, as I said, to committee counsel, a matter that was a part of a submission to Cabinet. The part where I can say, Mr. Renwick, is in error is the notation opposite the first paragraph where it says "the Premier spoke with Mr. Gathercole". I don't believe I did speak with Mr. Gathercole and I say quite frankly that if I had ~~and~~ and I said earlier that perhaps I should have, but it just wasn't done, ---

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(Hon. Mr. Davis)

that if I had spoken to Mr. Gathercole, my advice, if I had given it, would have been not to have it go to Government Services.

So I have to say that with great respect to Mr. Fleck and Mr. Rowan, the notation is wrong.

Mr. Renwick: That both notations are wrong?

Hon. Mr. Davis: No, I can't say the second notation is wrong. I'm referring to the notation opposite the second paragraph.

~~Mr. Renwick: Yes, I see. I am looking at the notation, that you may have had in mind.~~

H-1345 to follow

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5.25-5.30 pm

V H

(Hon. Mr. Davis)

~~I have to say that I am not sure about the contents of the letter.~~

~~But I am sure that I am not sure about the contents of the letter.~~
~~is not sure about the contents of the letter.~~
~~Paragraph~~

Mr. Renwick: May I then take it, Mr. Premier, that you may very well have spoken about the contents of the second paragraph in the letter but that you are clear in your mind that you did not speak about the first paragraph of the letter?

Hon. Mr. Davis: Yes, I am quite clear about the first paragraph, Mr. Renwick. I am not as sure about the second ~~para~~ because I know at some point in time, I can't tell you whether it was at this meeting, I did talk to the chairman of Hydro about the Nanticoke-to-Pickering line because we had some discussion about the possibility of a review such as we eventually undertook with the Solandt commission.

Mr. Renwick: Mr. Premier, who was present at that meeting? I understand ^{that} ~~that~~ Mr. Fleck was away at that time. That is, the meeting on June 1 between yourself and Mr. Gathercole.

Mr. Fleck: I was not away. I was back at that time.

Hon. Mr. Davis: He was present at the meeting,
Mr. Renwick.

Mr. Renwick: Mr. Premier, do you recall Mr. Fleck discussing this letter with you as to what action you had taken on it upon his return from his trip?

Hon. Mr. Davis: No, I don't.

Mr. Renwick: Mr. Premier, I am entitled to presume that the letter, that you have seen this letter?

Hon. Mr. Davis: Yes. But I cannot tell you, Mr. Renwick, that I in fact saw this letter before the June 1 meeting. I quite frankly don't know.

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V.H.

Mr. Renwick: Well, I just happen to have it in my pocket. I was rather struck by a remark of -- attributed to Sir Edward Cope by Senator Ervin a few days ago that "one scratch of the pen is worth more than the slip of the memory of many witnesses" and I am very anxious to be -- to try to clarify whether or not as a result of the receipt of this May 16 letter, you made a conscious decision not to discuss the head office question with Mr. Gathercole?

Hon. Mr. Davis: No. No, Mr. Renwick, I made no conscious decision not to discuss it with Mr. Gathercole and I did not discuss with him the question that was raised in this letter but it was not as a result of a conscious decision not to discuss the head office building with him.

Mr. Renwick: Well then may I refer, Mr. Premier, to the notations which ~~were~~^I made during your evidence this morning, in which you gave the reason why this matter would not have -- why you did not feel that you need to discuss it with Mr. Gathercole.

~~Mr. Renwick: I didn't say that, Mr. Davis, with great respect.~~

Hon. Mr. Davis: No, I didn't say that, Mr. Renwick, with great respect.

Mr. Renwick: Perhaps you would help me.

Hon. Mr. Davis: I didn't say I didn't need to discuss it with Mr. Gathercole, I said that perhaps I should have but in fact in my recollection I did not but that if I had discussed it with him, my advice would have been there was no need to have it go to Government Services. I think that is factually I hope what I said.

Mr. Renwick: I accept that because my note is that if -- this was my notation of what you said -- if we had discussed, would have advised not to refer to Government Services, and you gave as your reasons for giving that evidence to this committee, two matters. One the question that we touched on earlier

H-1346 follows



(Mr. Renwick)

~~and you gave an opinion that the committee was satisfied~~
~~this committee was satisfied~~
 on ~~earlier~~ the relationship between Hydro and the government,
 and that you were satisfied that they had the legal capacity
 to go ahead on their own.

Hon. Mr. Davis: As I said to Mr. Bullbrook who, I
 think, raised this at the time, Mr. Renwick, this was the primary
 reaction to what I believe I would have said if I had said
 something to Mr. Gathercole. Not only the legal basis but
 the fact that traditionally, or the relationship between
 government and Hydro, ~~is~~ is something where they were in
 a position to make this determination on their own.

Mr. Renwick: Mr. Premier, we've had no evidence
 one way or the other before the committee as to whether or
 not Hydro did have the legal capacity to go ahead.

Hon. Mr. Davis: I'm sorry, I'm assuming that,
 Mr. Renwick, if somebody wants to raise this legal question,
 I can only say that I have, and I think a lot of people have,
 operated on the assumption that they do have this legal right.

Mr. Renwick: My problem, Mr. Premier, with this
 part of the discussion is I want to try to avoid the hypothetical ^①
~~and~~ I want to understand your state of mind with respect to
 the question of whether you should pursue a personal view
 of non-involvement and the reasons why that non-involvement,
 which I think comes through clearly from the course of your
 evidence, was supportable ~~and~~ the two reasons, as I understand
 it, that you gave were, one, that in your mind you felt they had
 the legal capacity to go ahead.

The second item in my note is that ~~in~~ in view

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5:30-5:35 pm
C.B.(Mr. Renwick)

of the nature of your friendship with Mr. Moog you would have been reluctant to have had a government ministry involved.

Mr. Premier, let me tell you what my view ^{is} of Hydro's position at that time. This is May of 1972. The commission has not approved of any arrangement with Canada Square, that was subsequent in the latter part of June and in July of 1972; that Hydro's position as stated by the chairman was that they were making a choice amongst a number of developers who had submitted proposals with respect to the building.

Now, my question again comes back to the point whether it would not have been advisable to have Government Services, who had expertise on the question of lease-back arrangements and property operations of all kinds, to have made the evaluation amongst the various proposals that were put forward, in order that Hydro would have the benefit of that advice and, to the extent that the relationship of Hydro and the government is significant, ^{that} the government, also would have had the benefit of that expertise.

Hon. Mr. Davis: Mr. Renwick, I don't say there is not some degree of logic but I think the other side of coin also has to be pursued, and that is, if a ministry of the Crown does become involved in, shall we say, assessing or even second-guessing ^{Hydro} there is the traditional question then of relationship and I say ~~that~~ a peripheral reason, and I say this very personally because I didn't have to make this determination, I volunteered this this morning on the basis if I, in fact, ~~was~~ had been advising Mr. Gathercole ~~this~~ this could have been a peripheral reason. I think that

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5:30-5:35 pm

C.B.

(Hon. Mr. Davis)

if you take a look at the situation and I don't like dealing
in the hypothetical either, but let's deal in the hypothetical.

If Government Services had agreed, say, with the Hydro determination,
perhaps
the work of this committee would be even more difficult.

~~In other words, the relationship between
ministries
would be even more difficult.~~

H 1347 to follow

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5:35 - 5:40 pm
CA

H-1347-1

(Hon. Mr. Davis)

~~work of this committee would be even more difficult.~~ In other words there is a much closer relationship between ministries of the government to government than between Hydro. I think you understand what I am saying I hope.

Mr. Renwick: Yes, I understand. My problem relates very simply to the relationship between the government and Hydro.

Hon. Mr. Davis: Yes, and I think, Mr. Renwick, I will try to be as helpful as I can. I am always prepared to discuss and listen. We wouldn't have had the task force on Hydro if I didn't feel, or hadn't felt at that time, that there was merit in reassessing the relationship between Hydro and the government, and I think it is fair to state that part of the task force report directs its attention to this relationship. I think it is also fair to state that that is not totally definitive even at this time. I can't really tell you what I think the perfect relationship should be. I think that there is great merit in not having Hydro involved; I will be frank about this; or government involved in the day-to-day operation in some of the small ~~extra~~ "p" political determinations that should be made by an organization of this size and this complexity; and I don't think there is any argument about that. At least I hope not. I think when it comes to matters of very basic consideration - for instance the decision that the government made to support Hydro in a massive extension of their nuclear programme that we don't have the expertise in government, Mr. Renwick, to do this, but nonetheless we sensed on the basis of the submission that this was a proper allocation of Hydro's resource in that particular direction because of the source of the energy supply itself. In other words we have uranium; not in as great abundance I ~~would~~ say with respect as some people would anticipate, and I think here government does have a responsibility to be involved, and I think it has a responsibility to have Hydro be part of and conscious of the total energy situation, and that government policy must prevail as it relates to a matter of major concern of this kind. But I would be reluctant to see government, as I say, being ~~extra~~ involved in the traditional day to day administrative decisions being made by

H-1347-2

(Hon. Mr. DAVIS)

that organization, even with its new structure. In fact, as you will recall - I don't want to prolong this discussion - in the Task Force report they recommended the establishment of the corporation I think ~~partially~~ partially to give it a different public perception, and partially for an internal perception; and part of the recommendation, and I'll be very frank about this, I personally did not accept this, ~~was~~ was to have two public servants on the corporation board. I ~~felt~~ felt that really to at one time argue that there should be a division in the relationship at the same time to suggest that you should have two senior public servants on the corporation board really ~~was~~ was something of a contradiction. That doesn't ~~help~~ really help you as to what the ultimate relationship should be.

Mr. RENWICK: I think it all perhaps does help me because I am still dealing with the letter exhibit 178, Mr. Premier, and I am very much concerned about it. I am speaking with you as Premier of the province who receives a letter from the chairman of the Hydro-Electric Power Commission about a once in the generation capital expenditure on a non-revenue producing asset to cost in the neighbourhood of \$35 million to \$40 million, or I believe the final figure is \$44,500,000. Now in the light of that relationship, as I understand it, the chairman of Hydro in his formal capacity asks the Premier of the province in his formal capacity for his advice. Now we know as a fact from your evidence that no response of any kind was made to Mr. Gathercole about that portion of this letter. That is correct, Mr. Premier?

Hon. Mr. DAVIS: That part is correct. The only point I would like to make, Mr. Renwick, just so there is a very clear understanding, that while ~~you~~ you can look at this as ~~a~~ non-revenue producing enterprise on the part of Hydro, and ~~while I don't want to get back to the observations that...~~

H-1348-1 follows

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5:40 - 5:45 pm
JLP

(Hon. Mr. Davis)

~~understanding that while our own book at this as a non-revenue~~
~~producing enterprise on the part of Hydro,~~ and while I don't want
to get back to the observations that Council ^{not} made with respect to
my mathematics on the savings and rental, if, in fact, there is
a saving even if it is less than the figure that I use in the
Legislature, and I am prepared to accept whatever the committee
determines the saving is, there is a revenue situation ^{accruing to/} ~~some~~
Hydro of 2 dollars whatever that figure may be. All I am saying is
that I don't think you can look upon it as being a completely non-
revenue situation from the economies of Hydro. But, you are quite
right, I did not, and I make no bones about it, I did not reply to
the last sentence in the first paragraph of Mr. Gathercole's letter
of May 16 to the best of my knowledge.

Mr. Renwick: And, Mr. PREMIER, I must ask you
this question because you are the only one that can answer it, that
formulate
as at that time you did not ~~formulate~~ any reasons in your mind as
to why you did not reply to that letter?

Hon. Mr. Davis: That is correct, Mr. Renwick, I
just did not deal with this letter, certainly for the June 1 meeting
or since. And I was trying to be as helpful as possible both this
morning and in our discussion as to what quite frankly I believe
my advice would have been to Mr. Gathercole if, in fact, I had dealt
with him or dealt with it with him.

Mr. Renwick: Mr. Premier, could I say that your
non-response to this letter was not an oversight but a decision of
yours not to respond?

Hon. Mr. Davis: No, that is not correct, Mr.
Renwick. I hope I made that clear - it was not a decision not to
respond, it was a case of not having it - I believe this - at the
time I met with Mr. Gathercole on June 1, and I quite frankly just
did not deal with it; it was a decision on my part not to respond;
it was a case of not responding, if you can draw the distinction,
but there is one.

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5:40 - 5:45 pm
JLP

MxxxRxx

Mr. Renwick: In other words, it was not an oversight on your part?

Hon. Mr. Davis: I would say that it could be that would be a better description than saying that I had made a decision not to respond; I did not make a decision not to respond.

Mr. Renwick: Well, Mr. Premier, I suppose

Hon. Mr. Davis: I don't like to call it an oversight.

Mr. Renwick: I suppose at some point I have to join with my colleagues here in coming to some conclusion about it.

Hon. Mr. Premier: Well, I will repeat it, I will repeat it if it will help you and your colleagues. There was no decision on my part not to respond. I did not respond because I did not have it, or think of it when I met with Mr. Gathercole ~~xxx~~ on June 1~~st~~, but I just do not, or whatever the date was, I do not ~~xxx~~ want you to think, or members of the committee to think that I in any calculated way did not respond. That is not the case.

Mr. Renwick: Mr. Premier, believe me, I wasn't thinking of any Machiavellian calculation

Hon. Mr. Davis: No, I know, I appreciate that.

Mr. Renwick: Mr. Premier, I take it that consistent with the position which you took throughout this, that it would be consistent that you did not choose to reply now way or another in this letter.

Hon. Mr. Davis: I think, no I think that would be not quite right, Mr. Renwick. I think that it would be consistent that if I had replied I would ~~xxx~~ have said not to go the route of Government Services. I think that would have been consistent with the position that I had maintained throughout the entire situation and that is, ~~Yes~~, we were not saying "no, in ^{at's} contradiction", and that this was the determination and decision of Hydro.

Mr. Renwick: Mr. Premier, let me go back to another comment that was made a little bit earlier. It's quite true that had this matter come before Cabinet, that Cabinet would not have been qualified of itself to evaluate the developers' proposals.

Hon. Mr. Davis: I think that if there had been a presentation from Hydro on its own to Cabinet, MR. Renwick, I don't think there's any way that Cabinet would have had the capacity to make that decision. I think that's right.

Mr. Renwick: And, Mr. Premier, really the only resource available to the government, and a good resource, to make a qualitative evaluation of the developers' proposals would have been the Ministry of Government Services.

Hon. Mr. Davis: Well, there would be the Ministry of Government Services or if the government had determined as a matter of policy, which obviously it didn't, Mr. Renwick, to have some private consultative group, that would have been another route I am sure. I mean I am just trying to think out loud just what options there would be.

(Tape 1348-3)

July 23, 1973
5.45-5.50 p.m.
M.F.

H - 1349 - 1

~~(Hon. Mr. Davis)~~

~~consultative group, that would have been another route I am
sure. I mean I am just trying to think of what options
there would be~~

Mr. Renwick: Mr. Premier, I take it that at no time
between the opening -----

Hon. Mr. Davis: The other point I would like to make,
Mr. Renwick, so you will understand, ~~that~~ I have said the notation
is wrong so you will understand the procedures in the office.
Once the notation is made here, which I say with respect to my
staff, is a wrong notation, ~~that~~ it would not be brought up again
because it has been, in fact, according to this notation, dealt
with. So when this is put on by Mr. Rowan it means in his view
that the matters have been finalized and as a result is not raised
with me again.

Now I am not in any way - I hope this is clearly
understood - heaven's above, there is a lot of material going
through the office but the notation is wrong and the reason it
wouldn't be raised again is because of the notation being there,
if you understand me.

Mr. Renwick: Mr. Premier, in the month of May, the
latter part of May, and around the first part of June, did you
have any intimation, perception or belief that if all went the
way that the procedures were going at Hydro, that the contract
would end up with Canada Square?

Hon. Mr. Davis: No, Mr. Renwick, ~~the~~ first I was aware
of Hydro's ultimate decision, to the best of my recollection,
would be when Mr. Fleck showed me the press release of July 21st,
and as I said to commission counsel I cannot tell you exactly
on what date Mr. Fleck showed this to me, I think we have
covered it, but that would be the time that I was aware.

Mr. Renwick: Mr. Premier, if I may turn to another
area that ^{has} concerns me, my concern being mainly because I am
confused.

H - 1349 - 2

(Mr. Renwick)

In Mr. Cronyn's evidence, Mr. Cronyn was relatively indefinite about specifying the times at which conversations took place, except for the conversation which he had with Mr. Smith which he specifically earmarked as being after the time when Mr. Nixon's questions were tabled in the House. Can you recall, of your own independent recollection, and apart from having read Mr. Cronyn's evidence, when Mr. Cronyn spoke with you about the Hydro building, bearing in mind that my ~~notes~~ notes today show that you said late November, but then later on when there was a reference by Mr. Shibley to ^a ~~the~~ December 15 meeting with Mr. Cronyn, you said it might possibly have been at that time?

Hon. Mr. Davis: Mr. Renwick, I will try to -----

Mr. Shibley: Mr. Chairman, if I could interject, I think the witness's initial response was it was either late November or early December. It came together as part of his initial response.

Hon. Mr. Davis: I would only say, Mr. Renwick, you are asking me a great deal. It would still be my best recollection that it would be the latter part of ~~December~~ November, the early part of December, some time within that time frame. I never related in my own mind that discussion to the questions in the House, I really related it to the discussion that I had had with Mr. Cronyn related to the whole concept of centralization, de-centralization of government administration.

Mr. Renwick: Mr. Premier, my problem with this is that Mr. Cronyn referred to it as of a casual nature and I believe that your evidence is that it was a relatively casual observation. Do you independently recall that it was solely related ~~to the~~

Tape H - 1350 follows

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M.R.

(Mr. Renwick)

~~...casual observation. Do you independently recall that it~~
~~was about~~ that it ~~was solely related~~ to the question of
centralization or de-centralization or dispersal and not
related to any complaints with respect to the method of
the allotment of the Hydro contract?

Hon. Mr. Davis: No question about that, Mr.

Renwick. My ---

Mr. Shibley: Mr. Premier, I think again in
fairness to the witness, Mr. Cronyn made some mention ---
and I think the Premier should be referred to it because I
don't think he has read the transcript of Mr. Cronyn's
evidence. My recollection is that Mr. Cronyn also testified
that ^{he} Hydro had done a "sloppy job" and that that was part of
the comment to Mr. Fleck, I believe, at the time he was
discussing it with him. So I just give you that as a rounded
out ~~Renwick~~
~~copy~~

Mr. Renwick: I was aware of that.

Hon. Mr. Davis:

~~XXXXXXXXXX~~ And I don't think, Mr. Renwick, that
Mr. Cronyn made observations to me about the procedures of
Hydro. I really - well, to the best independent recollection -
is that the phrase you used?

Mr. Renwick: That's one of the phrases.

Hon. Mr. Davis: One of the phrases you used, ~~the~~
best independent recollection I can bring to bear ^{is} that the
discussion was part of a broader discussion and it related to
the geographic location of the head office building. It did
not relate to Ellis-Don or complaints of the contract.

Mr. Renwick: Mr. Premier, my impression of Mr.
Cronyn's evidence was that it was, I think I used the phrase
at the time, was that it was relatively compartmentalized,
or appeared to be in compartments. Do I take it that throughout
the whole of the work of Task Force Hydro, so far as you are
aware of it, and the reports which came through the Committee
on Government Productivity, that during the whole of that period

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(Mr. Renwick)

of time there was no discussion referable to the plans of Hydro to centralize its head office operation and the discussion about dispersal or regionalization or decentralization of Hydro?

Hon. Mr. Davis: I think that is fair to state.

I can't recall any discussion with Mr. Cronyn. I'm trying to think of the Task Force report itself. My own recollection of the Task Force report doesn't make any reference to the head office location. I don't mean the contract, obviously it wouldn't. And, I think really - I'm trying to recall this as best I can, Mr. Renwick - that it was part of the COGP area that Mr. Cronyn was referring to, not Hydro, with respect to decentralization. I mean, Hydro has had a degree of regionalization, as you well know, for a number of years, perhaps to a greater extent than government has.

So that my best independent recollection is that we were talking about government and decentralization, the difficulty of it, the complexities of it and that Mr. Cronyn made reference to the Hydro head office as being a demonstration or an example of whether one should or should not, as far as location is concerned.

But, really nothing about the contract or the way it was done.

Mr. Renwick: I take it, just to clarify this in my own mind, I take it, Mr. Premier, that the only knowledge which you had up until the time that Mr. Nixon tabled his questions in the House, about any discontent amongst any of the ~~unsuccessful~~ unsuccessful developers was as a result of comments made to you by Mr. Fleck?

Hon. Mr. Davis: That is correct. There was no communication to me, Mr. Renwick, from any of the other developers or anyone on their behalf.

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Mr. Renwick: And did Mr. Fleck indicate to you the source of the information about the discontent of Ellis-Don?

Hon. Mr. Davis: I don't recall. I shall check and see if Mr. Fleck can remember. I can't but he might and when he comes again, if you need him, perhaps we can help with that. I can't ~~and~~.

Mr. Renwick: But you don't recall ~~and~~

Hon. Mr. Davis: No, I don't.

Mr. Renwick: ~~and~~ that Mr. Fleck used Mr. Cronyn as the person who had come to him to register the complaints?

Hon. Mr. Davis: No, I honestly don't recall it. That doesn't mean that he didn't.

Mr. Renwick: Now, I think one of my major stumbling blocks is this very fine line...



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AA

(Mr. Renwick)

~~stumbling block~~ is this very fine line ~~between~~ of non-involvement and I say that I am not making any judgemental value. The non-involvement of the Premier and of the government in the decision of Hydro and of the course of the procedures which they followed; that fine line between involvement and non-involvement and duty or no duty because of a concern that if there was a duty to know or to ~~enquire~~ ~~was~~ and a person consciously or unconsciously does not make the enquiry, he is nevertheless presumed to have the information which he would have obtained had he made the enquiry. My concern is whether at any time in the course of ~~these~~ these discussions, either in the summer of 1972, or in November of 1972, or subsequently, you had any reason to believe that you were under an obligation to ~~enquire~~ ^{enquire}.

Hon. Mr. Davis: Into what?

Mr. Renwick: Into the way in which Hydro let its contract.

Hon. Mr. Davis: No, I don't think so, Mr. Renwick. Certainly not in July of 1972. I had not knowledge then of the procedures that Hydro used and I would think on the basis of any information I had in November of 1972 that there would be no need to ^{enquire}. I think really the question I hope I was very frank about it with the committee that I think that aspect and the aspect of patronage and those related political matters, if that had been the basic subject of the discussions in the Globe and Mail on those two occasions, that I think by and large those are matters that are probably best dealt with under our system in the debates within the House itself. I think it's you know, it is very hard for me to go back to April of this year and try to translate for you sort of the mental process that went on, but I think it is fair to state perhaps ^{phrase} I ~~state~~ it this way, the basic reason that I asked the House

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AA

(Hon. Mr. Davis)

to consider the establishment of this committee really related to the statement in that story that upset me a great deal and that was the "so-called threat."

Mr. Renwick: Well, Mr. PREMIER, for what it's worth, that came through perfectly clear to me in the House that day, ^{that} that was the precipitating cause of ~~my~~ your decision to do it.

Mr. Premier, I only have one other question and ~~whether~~ can you recall the time in June or roughly the time in June when Mr. Snow had his barbecue in 1971?

Hon. Mr. Davis: No, but I will try and find out for you. I think it was

Mr. Renwick: Well, we can ask Mr. Snow if that's necessary.

Hon. Mr. Davis: Yes. I would hope that you might find it without hav^{ing} him here. I think it was the latter part of the month.

~~I am not sure of the date.~~

Hon. Mr. Davis: I am told it was the 30th of June. We were sitting later that year, Jim, I guess.

Mr. Renwick: Well, the 30th of June, but your evidence is that there was no discussion between you and Mr. Gathercole or with anyone else at that barbecue about ~~the~~ the head office of Hydro?

Hon. Mr. Davis: Jim, I don't mean to quibble, but I think I said I was trying to be as helpful as I could, that I thought there was not. My best recollection, independent recollection, that just by the very nature of the gathering itself, where- as the dinner at the Toronto Golf Club, yes. I believe that the Chairman of Hydro did mention it. I just don't recall it at Mr. Snow's barbecue.

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AA

~~(Mr. Renwick)~~

Mr. Renwick: Thank you, Mr. Premier.

Hon. Mr. Davis: For those who have attended it, I think they would understand.

Mr. Renwick: Thank you, Mr. Premier. Thank you, Mr. Chairman.

Mr. Chairman: Mr. Shibley has one or two clarification questions that — ^(You have) ~~one or two~~, Mr. Gaunt?

Mr. Gaunt: I have a few tag-end questions, Mr. Chairman.

Mr. Chairman: All right. You will proceed, if you would, sir.

Mr. Gaunt: Mr. Premier, I just wanted to clear up in my own mind several items that I had been wondering about. First of all, I gather that in a follow up

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CA

H-1352-1

(Mr. Gaunt)

~~clear up in my own mind several items that I have been wondering about.~~

~~First of all I gather that in a follow up~~ to Mr. Renwick's question, and the comment you made this morning; I gather that you did not, or any of your officials, or any people within the government to your knowledge, contact ~~the~~ ^{the} Minister of Government Services or any officials within that ministry to see if, in fact, they could be helpful with respect to the lease-purchase arrangement proposed by Hydro?

Hon. Mr. Davis: I think, Mr. Gaunt, that is correct.

Mr. Gaunt: If I may turn now to the August, 1971, meeting, I believe; ~~as~~ I think you described it as a social occasion. I am referring to the one where Mr. Moog mentioned to you that he had an approach from Hydro and that he was interested in the deal.

Hon. Mr. Davis: No, I don't think, to be factual, that he said he was interested in the deal; there wasn't a deal. He did not. I remember the phrase very specifically that he was approached by Hydro, that there were some discussions, and, I think, Mr. Gaunt that was really the final part of the discussion.

Mr. Gaunt: I take it that that particular discussion was very brief?

Hon. Mr. Davis: Very brief indeed.

Mr. Gaunt: Do you have a recollection of the social occasion where it was ~~heard~~ ^{held}?

Hon. Mr. Davis: Yes, I believe it was at our own residence and it was, as I say, a very, very brief discussion.

Mr. Gaunt: And I believe that you said previously it was, to your best recollection, around the end of August, 1971?

Hon. Mr. Davis: That is correct.

Mr. Gaunt: Was there anything else ~~in~~ other than the comments you have just indicated made by Mr. Moog, and your response indicated,? Did Mr. Moog in any way put it in the context that he had been approached by Hydro and he thought he ~~had~~ stood a good change? That sort of thing.

H=1352-2

Hon. Mr. Davis: No, never mentioned that at all, Mr. Gaunt.

Mr. Gaunt: At the Pickering meeting in February, you had a brief discussion, as I recall it, with Mr. Gathercole, and you indicated to him at that time, if I recall, that perhaps he should discuss these matters with the Treasurer. I think I am stating it fairly.

Hon. Mr. Davis: Not these matters. I think it is quite fair to assume that I mentioned to the chairman of Hydro to check with or discuss with the Treasurer the matter of the capital situation. I did not suggest to Mr. Gathercole that he discuss the building itself, and so on, with the Treasurer.

Mr. Gaunt: Yes, all right, the capital situation. I am wondering, just as a matter of curiosity, what you had in mind by the capital situation, in ~~view~~^{view} of the fact that you were aware that Hydro would, in all likelihood, proceed on a lease-purchase arrangement which would mean that it would not be necessary for the Province of Ontario to back any financial activity they might have.

Hon. Mr. Davis: I just wanted to make sure that whatever was done, Mr. Gaunt, did not affect the capital situation. Quite obviously if the route, were to be, as it was to be, that of a lease-purchase it was not a problem, but I think it is quite fair for the chairman of Hydro ~~and~~ or for me to have said to the chairman of Hydro to be concerned about, or to make sure ~~of~~ (I think this was the phrase) ~~to~~ to make sure the capital position was not affected.

Mr. Gaunt: Just one other matter. The loan of 1972 which was obtained in ~~xxxx~~ Europe, has been referenced. Do you have any knowledge if Mr. Moog was involved in any way ~~at~~^{with} the loan of 1968, which I believe was obtained in the European market?

Hon. Mr. Davis: I think that is something you could ask Mr. Moog tomorrow, Mr. Gaunt. My information is...

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V.H.

(Hon. Mr. Davis)

~~I think that is something you would ask Mr. Moog tomorrow,~~
~~Mr. Gaunt.~~ My information is, and I believe it is relatively accurate, that he was most ~~a~~ definitely not, that he was not involved, received no commission, or anything else.

Mr. Gaunt: Thank you very much Mr. Premier.

Hon. Mr. Davis: You are welcome.

Mr. Chairman: Mr. Newman.

Mr. W. Newman: Just one point I would like to get cleared up in my own mind, Mr. Premier. The hastily arranged, impromptu meeting you had in ~~a~~ Zurich with the Swiss banking people; this basically ^{is} my interpretation of your comments today was that you were feeling out the climatic conditions of the world monetary situation for your own personal information Mr. Premier?

Hon. Mr. Davis: Yes. And I think, ~~quite~~ quite frankly, with a particular interest in the economic position of our neighbours to the south.

Mr. Chairman: Any other questions? I know Mr. Shibley has one or two.

Mr. Deans: I have.

Mr. Chairman: Mr. Deans.

Mr. Deans: You mentioned that you have been a friend of Mr. Moog for 15 years or more. Is it -- would you consider it to be well known among people in Cabinet that friends of yours in the party that Mr. Moog was a close personal ~~xxx~~ friend?

Hon. Mr. Davis: Well, Mr. Deans, that is very hard to answer. I ...

Mr. Deans: Let me put it another way.

Hon. Mr. Davis: I never attempted to hide the fact that Mr. Moog and I and our families have been friends. I have endeavoured in spite of some of the difficulties to lead a relatively private life in my private capacity so that I have not made a conscious effort to tell anyone who

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V.H.

(Hon. Mr. Davis)

my friends are. I would say this that I think it is quite possible that a lot of my political ~~the~~ friends might not know that Mr. Moog was a personal friend ^{because} ~~because~~ Mr. Moog I think is what would be considered a non-political friend, if you recognize the differentiation. In other words, he, ~~as~~ I say this with great respect to my colleagues on the select committee, has never been closely identified with the Progressive Conservative party. I question whether he is a card carrying member of the party. I have never seen him at a political event. He is not part of that ...

Mr. Deans: Well, let me put it to you. The reason that I ask the question is that if Mr. Moog were then to say that he was a friend of the Premier's or that he was an advisor to the Premier, there are people who could make such a statement and it would raise eyebrows, it would be doubted very much. It doesn't seem to have been doubted by anyone ~~in~~ that Mr. Moog was in fact a friend.

Hon. Mr. Davis: Of course, I can't comment on that, Mr. Deans, because I don't know to whom Mr. Moog may have said this or to what degree if he did say ~~that~~ it was accepted or what effect it might have. I could give you a good 20 minute dissertation on ...

Mr. Deans: Please don't!

Hon. Mr. Davis: ... both the pros and cons of being in quotes "a friend of the Premier" in the political climate of the 1970s, and I can argue it, Mr. Deans, quite honestly and objectively both ways.

Mr. Deans: Well it would do you no harm if you were dealing with ~~XXXX~~ Hydro.

Hon. Mr. Davis: Well I can argue it the other way too. But this would become somewhat partisan.

Mr. Deans: You would have to make it that way. I never would.

Hon. Mr. Davis: No, but that's when you become partisan.

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V.H.

Mr. Bullbrook: Is it the intention to attempt to not have the Premier obliged to return to us?

Mr. Chairman: It was my hope.

Mr. Bullbrook: Would you permit me one question therefore counsel?

Mr. Shibley: Yes.

Mr. Bullbrook: Mr. Premier, in connection with the line of questioning that I had adopted before, I want to refresh your memory if there is such a memory with respect to this matter, and I read from Hansard of June 15, 1973 and my purpose is to clarify fully your attitude and understanding of your meeting in Zurich. And the leader of the opposition put this question to you, this is recorded on page - sorry I can't give you the page number - it's June 15: THE LEADER OF THE OPPOSITION TO THE TREASURER.

"Mr. R.F. Nixon: Supplementary. Since testimony of the Hydro committee repeated the statement from a Hydro official that Gerhard Moog assisted the Premier in the establishment of financial connections in Germany leading to that loan, has the Treasurer asked the Premier, or his predecessor, as to what the role of Mr. Moog was in finding that loan?

"Hon. Mr. White: Mr. Speaker, my inquiries to date have revealed absolutely no connection between this ~~man~~ gentleman, whom I

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C.B.

(Mr. Bullbrook)

~~the hon. Mr. White. Mr. Speaker my inquiries to date have~~
~~revealed absolutely no connection between this gentleman whom~~
I do not know, and any of our financial activities.*

May I ask you first, sir, were you aware of the response
of the Treasurer on that date?

Hon. Mr. Davis: Yes I believe I'm aware of that
response, Mr. Bullbrook.

Mr. Bullbrook: Am I correct in assuming sir,
that you didn't regard the meeting that you had with Mr.
Moog and others at the Swiss bank as in any way related to
the financial activities of the Government of Ontario?

Hon. Mr. Davis: No, I wasn't regarding it in
that way at all.

Mr. Chairman: Mr. Shibley.

Mr. Shibley: Just to clear that up, neither did
you consider it related to the activities of Hydro with
respect to funding its new head office building.

Hon. Mr. Davis: That is correct.

Mr. Shibley: Because you hadn't understood the
content of what took place between Mr. Moog and ~~the~~ the other
Swiss banker?

Hon. Mr. Davis: That is correct, Mr. Shibley.

Mr. Shibley: Just while we are on that. Did you
see Mr. Moog make handwritten notes of information provided
to him in the course of that conversation?

Hon. Mr. Davis: Mr. Shibley, I've been - because
you ~~raised~~ raised this with me this morning and I can't

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C.B.

(Hon. Mr. Davis)

help you any more than I did this morning. I don't recall it. This doesn't mean he didn't or did. I can't help ~~you~~ you any more than that.

Right.
Mr. Shibley: Now then as you know I got your ^{relevant} ~~relevant~~

diary entries which are ~~relevant~~ only very recently and I was incomplete in one respect. On April 13, 1972 you had a meeting with Ken Rotenberg of Yolles and Rotenberg I think between five and five-forty-five. Would you please tell the committee what that was about?

Hon. Mr. Davis: Yes, I want to be very careful, Mr. Shibley. Mr. Rotenberg came in to see me; he brought with him the proposal for development of the Eaton, what I call the Eaton College St. site. He was there, or at least his ~~statement to me~~ was he was there to tell me of the potential development of this area, ~~outlined~~ some of the aspects of it. I don't know whether there was a referral or not to a potential road closing situation; I don't remember it in that great detail.

I think it is fair to state that he didn't ask, but made some inquiry about the interest of the government or Government Services in potential accommodation. I think I'm right in this that we either said we would or arranged for him to meet with Mr. Snow. I want to be very fair because it is really taxing my memory because it was not part of a presentation but there was ~~as~~ a reference made to this ~~of~~ area and some of the accommodation being a possibility for Ontario Hydro. I say very frankly, Mr. Shibley, until just a few days ago I didn't even remember the meeting and the only thing that brought it to mind was the press reports and the appearance ^{here by} ~~of~~ somebody for Y and R and the staff went through the diary because I recalled this I believe over the weekend, and found this entry

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C.B.

(Hon. Mr. Davis)

and I was anxious that you have that information.

Mr. Shibley: All right. Now then when you got the press release of July 21, did you take that press release as notification to you that Hydro had made its decision and the ~~was~~ matter was, so to speak, determined as at that time?

Hon. Mr. Davis: I think, not when the office got the press release, because I didn't see it until sometime after the 21st. Yes, I was under the assumption that certainly when it was announced in the press that the arrangement had been concluded.

Mr. Shibley: Just to put that answer in perspective. The formal documentation was not executed apparently until November 1st at the earliest. Were you ever notified as to the time of execution of the documents?

↓

H 1355 to follow

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Mr. Shibley: ~~Were you ever notified as to the time of execution of the documents?~~

Hon. Mr. Davis: I honestly don't think I was.

Mr. Shibley: So that in terms of your thinking as to when Hydro made its contract with Canada Square, your information in that respect and your thinking as to the timing in that regard was what?

Hon. Mr. Davis: I can't really be specific here whether I knew before the actual date of the contract that there were still matters to be settled; I honestly don't know, Mr. Shibley, but I do know that there was a period after the statement in the press when I thought the matter had been concluded. Now whether in that interval, and at what time I was aware that there were certain matters still to be resolved, I quite frankly don't know.

Mr. Shibley: Mr. Premier, you have touched on a period of time that is of interest to me. I would like to know whether you were aware of any outstanding matters other than the formalities that lawyers are engaged upon -----

Hon. Mr. Davis: I was not aware of - there was no outstanding matter of any significance. ^{In} ~~the fact~~ there was no outstanding matter brought to my attention.

Mr. Shibley: Finally, I did also note that you had a meeting with Mr. Gathercole on August 26th, 1971, which would be again following your return from your trip to Europe. Was it any part of the purposes of that meeting or any part of the discussion at that meeting that Hydro was going to let a contract for the head office building?

Hon. Mr. Davis: No, there was no discussion at all at that meeting, Mr. Shibley, about the Hydro head office at all.

Mr. Shibley: I have no further questions.

Mr. Chairman: Gentlemen of the committee, Mr. Premier, thank you very much for being with us today. It has certainly

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M.F.

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(Mr. Chairman)

been an exhaustive day for you meeting as you have from early this morning until after 6.15 tonight. I think some of us realize the responsibilities that go with your position and we are grateful for your assistance here today.

Hon. MR. Davis: Thank you very much.

Mr. Chairman: Gentlemen, we are adjourned until -----

Mr. W. Newman: Mr. Chairman, before we adjourn I have one or two things I would like to clarify.

First, if the necessary warrants have been issued. Will this file be coming forward?

Mr. Chairman: Well now you are asking me something

Mr. W. Newman: The reason I am asking, I assume that Mr. Shibley wanted to ask the Premier some questions in relation to it and would we be going ahead without the Premier next to Mr. Moog or where -----

Mr. Chairman: I think Mr. Shibley would have liked to ask the Premier some questions in regard to some of the correspondence in that file. It may be that if the file is produced without further delay that it won't be necessary to tie them in with the Premier's evidence, it may be that the committee will want that tie-in. I would hope that in the fact that we have had the Premier here all day that it may not be necessary to have him tied in, ~~with~~ his evidence tied in, with those documents. I can't say that and I think we will have to leave that question open.

I personally can't force Mr. Moog or his counsel to produce these documents. I think we will have to wait until tomorrow to see what happens on them and leave open the question I was asking earlier of the legal procedures whether it is the House, or the committee, or just who has to carry out this. That may take a little legal research into precedents. We do not

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M.F.

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(Mr. Chairman)

have too much prede~~dent~~ of our own to go on, so I am not going to try to attempt to give you those answers~~x~~ that I know we would all like to have. I hope that we will have co-operation from Mr. Finlayson and Mr. Moog tomorrow so that we won't have to cross those bridges.

We are adjourning until 10 o'clock and the thought will be that ~~when~~ when we find out what hour the provincial auditor's funeral is that we will adjourn in time for us to go there some time after 12. Thank you very much.

The committee adjourned at 6:20 p.m.

Tape H - 1356 follows

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	J.E. Bullbrook
	I. Deans
	M. Gaunt
	L.C. Henderson
	R.G. Hodgson
	W. Hodgson
	J.P. MacBeth (Chairman)
	W. Newman
	J.A. Renwick
	G.W. Walker
Clerk of the committee:	Paul Moore
Committee counsel:	R.E. Shibley, QC
Assistant to committee counsel:	J.P. Bell
Ontario Hydro counsel:	Pierre Genest, QC
	James McCallum, QC
Canada Square counsel:	Douglas Laidlaw, QC
	Blair Cowper-Smith
	G.D. Finlayson, QC
Premier and President of the Executive Council of Ontario:	Hon. W.G. Davis

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6:15-6:20 p.m.
M.F.

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